

Senate Committee on Environment and Public Works Subcommittee on Fisheries, Water, and Wildlife oversight hearing entitled, “Erosion of Exemptions and Expansion of Federal Control –Implementation of the Definition of Waters of the United States.” May 24, 2016

Request for Additional Information: Case Study 3 and Supporting Documents

Case Study 3

1. Project Summary:
SPK#2013-00513
The total project area is approximately 20 acres in size.

2. Issue:
 - a. Corps requires the inclusion of puddles that form after rain events created by and resulting from vehicular disturbance in the middle of a dirt road.
 - b. No data was supplied for the non-jurisdictional feature, but it was considered jurisdictional and verified.

3. Supporting Information:
Exhibit A – 2013 Delineation of WOTUS map (verified¹)
Exhibit B – Technical memo to Corps regarding Non-jurisdictional Feature 1
Exhibit C – Photo of Non-jurisdictional Feature 1
Exhibit D – Delineation of WOTUS Jurisdictional Determination Letter from Corps

4. Details: The original delineation map (Exhibit A) indicated a non-jurisdictional feature with supporting data to confirm non-jurisdiction. Additional technical memos and data were supplied to the Corps describing the non-jurisdictional status of the man-made depression in a dirt road (Exhibit B). The language in Exhibit B was accepted by the Corps, however in the jurisdictional determination letter (Exhibit D), the Corps asserts jurisdiction over this feature resulting in an additional 0.002 acres Seasonal Wetland with no supporting data.

5. Status: No progress

¹ Verified means that the US Corps of Engineers has conducted a field review and performed a verification or jurisdictional determination, concurring with the extent, location, and type of WOTUS within the project area.

Exhibit A



- Project Boundary
- Nonjurisdictional Feature- NJ#
- Seasonal Wetland- WF#
- Proposed Road Realignment
- Culvert- C#
- Other Water- OW#
- 1 Foot Contours
- Flow Direction
- Soil Data Points**
- Upland- U#
- Wetland- W#

The features presented in this figure shall be considered preliminary until written verification by the USACE.

Other Waters of the United States						
Feature Label	Feature Type	Class	Width (ft)	Length (ft)	Area (sq ft)	Acres
OW01	Other Waters	NRPW	3	604.5	1813.5	0.042
OW02	Other Waters	NRPW	3	287.5	862.4	0.020
OW03	Other Waters	NRPW	4	473.8	1895.0	0.044
Totals=				1365.7	4570.9	0.105
Wetland Features						
Feature Label	Feature Type	Class	Width (ft)	Length (ft)	Area (sq ft)	Acres
WF01	Seasonal Wetland	PAMB	n/a	n/a	18703.0	0.430
Totals=					18703.0	0.430
Total of All Features=				1365.7	23273.9	0.535

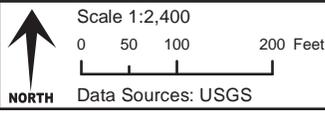


Exhibit A

Exhibit B

U.S. Army Corps of Engineers
Regulatory Division, Sacramento District
1325 J Street, Suite 1350
Sacramento, California 95814-2922
Attn: Zac Fancher

September 16, 2013

RE: Technical Memorandum for the Draft Delineation of Waters of the U.S Hilltop Drive Development Project (SPK-2013-00513)

Dear Mr. Fancher,

Gallaway Enterprises has made corrections and additions to the Draft Delineation of Waters of the U.S Hilltop Drive Development Project (WD) (SPK-2013-00513). Corrections and additional information added to the WD was made to clarify the size and classification of a non-jurisdictional feature within the project limits. The following excerpt is where corrections and additions to the WD were made.

The following paragraph can be found in the **Results** section under **Potential Non-jurisdictional** on Page 6.

Potential Non-jurisdictional

*One potentially non-jurisdictional seasonal wetland was delineated on the site. **This feature was created by** ~~an off road vehicles getting stuck in the mud and subsequent efforts to retrieve the vehicle.~~ **off road vehicles which subsequently left deep tire ruts in the soil. The indentations left by off road vehicles now hold enough water to support hydrophytic vegetation.** Because of disturbance from vehicles, vegetation was greatly reduced, but enough was present to complete the determination. The seasonal wetland appears to be isolated, as it is fed **mostly by heavy rains and some** on-site runoff but appears to have no direct connection to either of the streams. **This feature does not contribute to the function or ecology of the** ~~contribute any significant manner to the ecology or function of other jurisdictional features on site.~~ It does not abut nor is it adjacent and has no significant nexus. There are ~~0.1096~~ **0.002** acres of non-jurisdictional isolated wetland within the project area.*

gallaway

ENTERPRISES

**117 MEYERS STREET SUITE 120
CHICO, CA 95928 530-332-9909**

Should you have any questions, please do not hesitate to contact me at (530) 332-9909 or christine@gallawayenterprises.com.

Sincerely,



Christine Schukraft, Biologist
Gallaway Enterprises

Exhibit C



Photo of Non-jurisdictional Feature 1

Exhibit D



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

REPLY TO
ATTENTION OF

January 17, 2014

Regulatory Division (SPK-2013-00513)

Mr. Ron Giddings
MD Development
4255 Alta Camp Drive
Redding, California 96002-2468

Dear Mr. Giddings:

We are responding to your May 30, 2013, request for a preliminary jurisdictional determination (JD), in accordance with our Regulatory Guidance Letter (RGL) 08-02, for the Hilltop Drive Development Project site. The approximately 20-acre site is located on or near Sacramento River, Section 30, Township 32 North, Range 4 West, Mount Diablo Meridian, Latitude 40.5939°, Longitude -122.3630°, Shasta County, California.

Based on available information, we concur with the amount and location of wetlands and/or other water bodies on the site as depicted on the enclosed **April 29, 2013 Hilltop Drive Development Project Draft Wetland Delineation – Attachment A** map prepared by Gallaway Enterprises. The feature labeled "NJ01" on the above referenced map does not have an acreage figure indicated. Gallaway Enterprises has estimated this feature to be 0.002-acre in size. The Corps concurs with the estimate and has included "NJ01" in this Preliminary Jurisdictional Determination. The approximately 0.538-acre of wetlands and/or other water bodies present within the survey area are potential waters of the United States regulated under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

We have enclosed a copy of the *Preliminary Jurisdictional Determination Form* for this site. Please sign and return a copy of the completed form to this office. Once we receive a copy of the form with your signature, we can accept and process a Pre-Construction Notification or permit application for your proposed project.

You should not start any work in potentially jurisdictional waters of the United States unless you have Department of the Army permit authorization for the activity. You may request an approved JD for this site at any time prior to starting work within waters. In certain circumstances, as described in RGL 08-02, an approved JD may later be necessary.

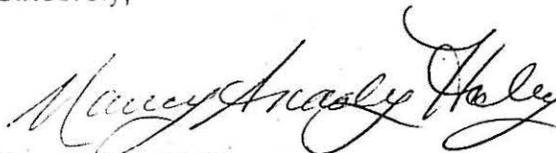
You should provide a copy of this letter and notice to all other affected parties, including any individual who has an identifiable and substantial legal interest in the property.

This preliminary determination has been conducted to identify the potential limits of wetlands and other water bodies, which may be subject to Corps of Engineers' jurisdiction for the particular site identified in this request. A Notification of Appeal Process and Request for Appeal form is enclosed to notify you of your options with this determination. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2013-00513 in any correspondence concerning this project. If you have any questions, please contact Mr. Zachary Fancher at our Sacramento Regulatory Office, 1325 J Street, Suite 1350, Sacramento, California 95814-2922, by email at Zachary.J.Fancher@usace.army.mil, or telephone at 916-557-6643. For more information regarding our program, please visit our website at www.spk.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,



Nancy Arcady Haley
Chief, California North Branch

Enclosures

cc: (w/o encls)

Ms. Jody Gallaway, Gallaway Enterprises, 117 Meyers Street, Suite 120, Chico, California 95928-6592

Mr. Matthew Kelley, U.S. Army Corps of Engineers, Regulatory Division, Redding Field Office, 310 Hemsted Drive, Suite 310, Redding, California 96002-0935