



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

Colonel Michael J. Farrell  
District Engineer, Sacramento District  
U. S. Army Corps of Engineers  
1325 J Street  
Sacramento, CA 95814

JUN 17 2014

Subject: Public Notice (PN) SPK-2014-00479, Tesla Battery Manufacturing Plant, Mather, Sacramento County, California.

Dear Colonel Farrell:

I am writing in response to the subject PN for a proposed 5-10 million square foot lithium ion battery manufacturing plant (approximately 230 acres) on a portion of the former Mather Air Base. Associated development would include a parking lot of about 100 acres, utility infrastructure, and rehabilitation and extension of an existing railroad spur. The project would fill all 10.099 acres of waters of the United States on the project site, including 3.58 acres of vernal pools and 5.99 acres of seasonal wetlands. Based on the available information, the EPA concludes that the applicant has not demonstrated compliance with the restrictions on discharges per the Federal Guidelines (Guidelines) promulgated under section 404(b)(1) of the Clean Water Act (CWA) at 40 CFR Part 230. Specifically, the applicant has not 1) demonstrated that the proposed project is the least environmentally-damaging practicable alternative (LEDPA), or 2) provided adequate information regarding compensatory mitigation for unavoidable impacts.

Our offices have worked together on wetland management issues at the former Mather Air Base since the early 1990s when the base closure Environmental Impact Statement was prepared by the US Air Force. Pursuant to the Supplemental Record of Decision, a condition of transfer is the completion of the wetlands management plan for the protected wetlands. We appreciate the efforts to complete that plan, but the subject proposal compels us to reiterate our position that no development affecting wetland resources can occur on the former base until the plan has been approved by your office, the US Fish and Wildlife Service, the California Department of Fish and Wildlife and US EPA. We recommend resolution of this issue be a top priority for a revised alternatives analysis defining the LEDPA.

Having reviewed the alternatives information prepared by the applicant, we are concerned that the applicant may have restricted the offsite alternatives analysis to sites that they own or manage, an improper constraint pursuant to 40 CFR 230.10(a)(2). We have not seen evidence that the applicant has examined sites that could be reasonably obtained, utilized, expanded or managed to accomplish the project purposes, which may involve fewer or no impacts to waters of the United States. It appears from the documentation provided by your staff that Tesla selected the site, as opposed to providing a thorough examination of practicable offsite alternatives. The Corps states in Comment 4 of the "Mather Commercial Development Area Standard Application Form – Response to Application Comments," dated June 3, 2014, "Three off-site alternatives is probably not adequate. Sites do not need to be currently owned by the County to be considered practicable." The applicants' response, stating that only

potential sites in Sacramento County were evaluated, gives the appearance that a potentially inappropriately narrow range of sites was considered, given the scope of the project for Tesla. With regard to compensatory mitigation, bank credits may be an appropriate approach, as stated in the PN. However, we suggest the applicant examine more carefully the availability of banking credits as most banks in that area have very few credits remaining, and may be oversubscribed to competing development needs. The 2008 mitigation rule requires the applicant to provide a complete mitigation plan prior to permit issuance. We strongly recommend the applicant prepare a realistic mitigation plan in light of the current dearth of banking credits in the immediate watershed area (and Mather Core Recovery Area).

Thank you for considering our concerns as you complete the final permitting actions for this project. As additional information becomes available on the above concerns, please contact Paul Jones at 415-947-3470, jones.paul@epa.gov, or me at 415-972-3483.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Brush". The signature is fluid and cursive, with the first name "Jason" written in a larger, more prominent script than the last name "Brush".

Jason Brush  
Supervisor  
Wetlands Section

cc:

Ken Sanchez, Assistant Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office  
Tina Bartlett, Director, California Department of Fish and Wildlife, Region 2  
Pamela Creedon, Central Valley Regional Water Quality Control Board