



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

February 21, 2020

Regulatory Division

SUBJECT: File Number 2012-00097S

Ms. Victoria Rutson
Surface Transportation Board
395 E. Street SW
Washington, DC 20423
Attn: Mr. Dave Navecky

Dear Ms. Rutson:

This letter is written in response to a request for comments on Docket No. FD 36312, Oakland Global Rail Enterprise (OGRE). OGRE intends to request authority from the Surface Transportation Board to operate over sections of existing and rehabilitated railroad tracks near the former Oakland Army Base in the City of Oakland, Alameda County, California.

All proposed work and/or structures extending bayward or seaward of the line on shore reached by mean high water (MHW) in tidal waters or by ordinary high water in non-tidal waters designated as navigable waters of the United States must be authorized by the Corps of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403 *et seq.* Additionally, all work and structures proposed in unfilled portions of the interior of diked areas below former MHW must be authorized under Section 10 of the same statute. All proposed discharges of dredged or fill material into waters of the United States must be authorized by the Corps of Engineers pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344 *et seq.* Waters of the United States generally include tidal waters, lakes, ponds, rivers, streams (including intermittent streams), and wetlands.

The use of existing railroad tracks is not regulated by the Corps of Engineers. However, the rehabilitation of existing railroad tracks or installation of new railroad tracks by OGRE would be regulated by the Corps and require a permit if the work occurs within waters of the U.S. and involves a regulated activity. Based upon the map you provided and the nature of the proposed project, it appears unlikely that a Corps permit would be required. However, we are unable to make a final determination without a full description of the proposed work and a jurisdictional survey (delineation) of the project area.

You may refer any questions on this matter to Naomi Schowalter of my Regulatory staff by telephone at 415-503-6763 or by e-mail at naomi.a.schowalter@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

Sincerely,

ORIGINAL SIGNED

BY

Katerina Galacatos

CHIEF, REG. DIV., SOUTH BR.

FOR

Katerina Galacatos

South Branch Chief, Regulatory Division

Electronic Copy Furnished:

David.Navecky@stb.gov
