



Regional General Permit 23

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

STATE OF CALIFORNIA MIDDLE-MILE BROADBAND NETWORK

EFFECTIVE: July 13, 2023

EXPIRES: July 13, 2028

The U.S. Army Corps of Engineers Los Angeles, Sacramento, and San Francisco Districts (Districts) hereby issue Regional General Permit (RGP) 23 authorizing activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, and/or work in or affecting navigable waters of the United States for the State of California Middle-Mile Broadband Network fiber optic infrastructure project.

Note: The term "you" and its derivatives, as used in this RGP, means the permittee or any future transferee. The term "this office" refers to the appropriate District office identified in the "Contacts and Additional Information" section of this RGP.

ISSUING OFFICE: U.S. Army Corps of Engineers (Corps) Los Angeles, Sacramento, and San Francisco Districts (Districts)

ACTION ID: SPL-2022-00120

AUTHORITIES: Section 404 of the Clean Water Act for discharges of dredged and/or fill material in waters of the United States and Section 10 of the Rivers and Harbors Act of 1899 for structures or work in or affecting navigable waters of the United States.

LOCATION: Statewide (California).

PURPOSE: The State of California Middle-Mile Broadband Network (MMBN) project includes the installation of a statewide middle-mile fiber optic network along approximately 10,000 miles of the State Highway System. The MMBN project would be constructed through the installation of fiber optic conduits, vaults to pull and splice fiber optic cable, and network hubs to amplify communication signals through the fiber optic cable. The conduit would primarily be installed underground using trenching and trenchless methods parallel to and primarily within the California Department of Transportation (Caltrans) right-of-way. Vaults and hubs consist of permanent structures that may require additional roadway widening or creation to provide safe access and maintenance.

BACKGROUND: Governor Gavin Newsom signed broadband legislation in July 2021 to provide reliable and affordable internet access to all Californians. Senate Bill (SB) 156

expands the state's broadband fiber optic infrastructure and increases internet connectivity for families and businesses.

Middle-Mile Broadband Network is an open access, state-owned, high-capacity fiber network that would carry large amounts of data at higher speeds over longer distances between local networks. It would connect to a last-mile broadband infrastructure that would connect homes and businesses with local networks. Last-mile infrastructure relies on middle-mile to provide service to residents, large and small-businesses, schools, government offices, public safety agencies, and libraries. An open-access middle-mile network will provide the backbone for last-mile providers to serve residences and reduce costs of providing service for businesses and anchor institutions.

Under the oversight and direction of the California Department of Technology, Caltrans has been tasked with carrying out the environmental reviews, compliance, and project construction for the placement of the MMBN infrastructure along key corridors of the State Highway System. Environmental reviews and compliance with applicable federal laws will be conducted by Caltrans and/or the lead federal agency.

AUTHORIZED ACTIVITIES: This RGP may be used to authorize the following activities associated with the State of California Middle-Mile Broadband Network project that involve the discharge of dredged or fill material into waters of the United States, including wetlands, and/or structures or work in or affecting navigable waters:

1. Telecommunication Lines and Associated Infrastructure: The installation or improvement of telecommunication lines, such as plowing, trenching, horizontal directional drilling, and jack and boring, as well as the installation or improvement of telecommunication lines to existing bridges, causeways, culverts, or overhead utilities, and installation or improvement of associated infrastructure, such as vaults, hubs, substations, poles, and foundations.
2. Temporary and Permanent Access: The construction, maintenance, or improvement of temporary and permanent access areas, such as maintenance vehicle pullouts, access roads, staging, storage, parking, and laydown areas, including pads, roads, bridges, culverts, and wetland protection matting and structures or work in navigable waters associated with the installation of temporary structures, such as scaffolding, pilings, and footings for bridges, docks, and piers and the operation of temporary construction equipment, as necessary to complete the activity, such as barges, tractors, and boats within navigable waters.
3. Dewatering Structures: The installation of temporary dewatering structures, such as cofferdams, bladder dams, diversion tunnels/pipes, and sheet piles.
4. Survey Activities: Survey activities including exploratory geotechnical type bore holes and exploratory trenching.

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5. Drilling Fluid Returns Remediation: To the extent that DA authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities.

In accordance with 33 CFR 322.2(f)(1) and 33 CFR 323.2(h)(1), this RGP authorizes activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts when conducted under the terms and conditions of this permit.

TERMS OF AUTHORIZATION:

1. Activities must be designed and constructed to minimize adverse effects to waters of the United States, including navigable waters, to the maximum extent practicable.
2. Discharges of dredge or fill material for each individual crossing of a water of the United States, including wetlands, shall not exceed 1/2 acre of permanent adverse effect. Discharges that permanently drain a wetland or convert a water of the United States to dry land shall be considered permanently adversely affected.
3. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if this office determines that it will not cause more than minimal adverse environmental effects. After construction, temporary fills and/or structures must be removed in their entirety, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction contours and elevations. The areas affected by temporary fills must be revegetated, as appropriate.
4. Temporary fills in waters of the United States shall be limited to the smallest area and the shortest duration required to accomplish the activity in waters of the United States. Material resulting from trench excavation may be temporarily side cast into waters of the United States for no more than 180 days, provided the material is not placed in such a manner that it is dispersed by currents or other forces, and shall be removed within 30 days following completion of the activity.
5. Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows. There must be no change in preconstruction contours of waters of the United States.
6. Where the telecommunication line is constructed, installed, or maintained in, over, and under navigable waters of the United States (i.e., Section 10 waters) within the coastal United States, Sacramento-San Joaquin Delta, and Lake Tahoe, a copy of the RGP

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verification will be sent by this office to the National Oceanic and Atmospheric Administration, National Ocean Service, for charting the telecommunication line to protect navigation.

7. For overhead telecommunication lines authorized by this RGP, a copy of the Pre-Construction Notification and RGP verification will be sent by this office to the DoD Siting Clearinghouse, which will evaluate potential effects on military activities.

GENERAL CONDITIONS:

1. Prior to commencing work in waters of the United States, you shall submit a pre-construction notification (PCN) for the following:

a. Discharges of dredge or fill material in peatlands, salt marshes, wet meadows, marine or estuarine mudflats, riffle-pool complexes, sanctuaries, or refuges.

b. Discharges of dredge or fill material resulting in greater than 1/10 acre of permanent adverse effects to waters of the United States.

c. Work and/or structures in, over, or under navigable waters of the United States (i.e., Section 10 waters), except bridges and causeways subject to the U.S. Coast Guard (USCG) Bridge Program.

d. Activities for which Section 408 permission is required from the Corps, pursuant to 33 U.S.C. 408, that have not received Categorical Permission.

2. No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the United States Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. You understand and agree that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

3. You are responsible for all work authorized herein and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of this RGP, including any activity-specific conditions included in any written RGP verification. You shall ensure a copy of this RGP, and associated drawings are available for quick reference at the project site until all construction activities in waters of the United States authorized by this RGP are completed.

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4. You shall allow representatives from the Corps to inspect the site of any authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with this RGP.
5. Federal permittees shall follow their own procedures for complying with other Federal laws. If PCN is required, the Federal permittee must provide this office with the appropriate documentation to demonstrate compliance. In accordance with a Memorandum of Understanding, signed April 18, 2022, and pursuant to 23 U.S.C. 326, the Federal Highway Administration (FHWA) assigned, and California Department of Transportation (Caltrans) assumed, lead federal agency responsibilities under the National Environmental Policy Act as well as consultation and coordination activities under other federal environmental laws. As a result, this office designated Caltrans as the lead federal agency to act on its behalf for purposes of required consultations for this RGP under federal environmental laws, including Section 7 of the Endangered Species Act (ESA), Section 106 of the National Historic Preservation Act (NHPA), and Magnuson-Stevens Fishery Conservation and Management Act (MSA). As such, Caltrans shall follow its own procedures for complying with the requirements of these federal environmental laws and shall provide this office with the appropriate documentation to demonstrate compliance.
6. No activity is authorized which may directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized which “may affect” a listed species or critical habitat unless ESA Section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. Federal agencies shall follow their own procedures for complying with the requirements of Section 7 of the ESA (see 33 CFR 330.4(f)(1)). If PCN is required for the proposed activity, you shall provide this office with the appropriate documentation to demonstrate compliance with those requirements.
7. No activity is authorized which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. Federal agencies shall follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). As such, Caltrans has been designated the lead federal agency responsible for implementing and enforcing any Programmatic Agreement with the California State Historic Preservation Officer and the California Department of Transportation regarding compliance with Section 106 of the NHPA, as it pertains to the MMBN project. If PCN is required for the proposed activity, you shall provide this office with the appropriate documentation to demonstrate compliance with those requirements.
8. If any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found, and to the maximum extent practicable, avoid

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construction activities that may affect the remains and artifacts until the required coordination has been completed. This office will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

9. Any activity authorized by this RGP requiring Section 408 permission from the Corps pursuant to 33 U.S.C. 408 is not authorized by this RGP until the appropriate Corps office issues the Section 408 categorical permission or completes its review to alter, occupy, or use the USACE project, and issues a written Section 408 permission letter.

10. No activity may use unsuitable material such as trash, debris, car bodies, and asphalt. Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

11. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high-water mark or high tide line, must be permanently stabilized at the earliest practicable date. You are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Where the certifying authority has not previously certified compliance of this RGP with CWA Section 401, individual water quality certification for the proposed discharge must be obtained or waived. If the certifying authority issues an individual water quality certification for the proposed discharge, you must submit a copy of the certification to this office. The discharge is not authorized until this office has notified you that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

13. An individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If you cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then you must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by this RGP. This office or the state may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

PRE-CONSTRUCTION NOTIFICATION PROCEDURES:

1. In accordance with General Condition 1, You shall submit an electronic PCN to the appropriate District office consisting of a written request for verification under this RGP. Electronic submittals shall be sent to the following:

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- a. North Coast Branch/Ventura Field Office (Ventura, Santa Barbara, San Luis Obispo, Inyo, and Mono Counties): splregventura@usace.army.mil
- b. Los Angeles and San Bernardino Counties Section (Los Angeles, San Bernardino, and Kern Counties): splreglasb@usace.army.mil
- c. South Coast Branch/San Diego and Imperial Counties Section (San Diego County, Imperial County, Salton Sea): splregcbad@usace.army.mil
- d. South Coast Branch/Orange and Riverside Counties Team (Orange County, Riverside County, Special Area Management Plans): splregorcs@usace.army.mil
- e. Transportation & Special Projects Branch (High-Speed Train, Mid-County Parkway/South Orange County/Caltrans): splpermitinquiries@usace.army.mil

Sacramento District: SPKRegulatoryMailbox@usace.army.mil

San Francisco District: CESPN-Regulatory-Info@usace.army.mil

2. The PCN shall include a letter or a completed Department of the Army Permit Application Form (ENG 4345), requesting verification under this RGP, and shall contain the following information to be considered complete:

a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third-party agents.

b. Location of the proposed activity (i.e., section-township-range and latitude and longitude in decimal degrees).

c. A description of the proposed activity including the purpose of the activity, description of any avoidance and minimization measures intended to reduce the adverse environmental effects caused by the proposed activity, and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the overall project, including activities that require Corps authorization but do not require PCN.

d. A tabulation of all impacts to waters of the United States, including the anticipated amount of permanent and temporary fill in waters of the United States expected to result from the proposed activity. Impacts to all waters of the United States must be reported in acres, square feet, linear feet, or another appropriate unit of measure. The table should also clearly identify the acreage and linear feet (as applicable) of loss of waters of the United States as defined in this RGP. A table or the Aquatic Resources Excel Spreadsheet "ORM2 Bulk Upload Tool" (<https://www.spk.usace.army.mil/Missions/Regulatory/Jurisdiction/Aquatic-Resources-Delineation/>) may be used to disclose this information clearly and succinctly.

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e. Sketches, maps, drawings, and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale bar included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate. The acreage and type (wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams) of each aquatic resource on the project site shall be identified. Wetland and Ordinary High Water Mark delineations must be prepared in accordance with the current method required by the Corps. Sketches, maps, drawings, and plans shall comply with the *Map and Drawing Standards for the South Pacific Division Regulatory Program*, available at: <https://www.spd.usace.army.mil/Missions/Regulatory/Public-Notices-and-References/Article/651327/updated-map-and-drawing-standards/>

f. If the proposed activity would result in greater than 1/10 acre of permanent adverse effects to waters of the United States, the PCN shall include a compensatory mitigation proposal or an explanation why compensatory mitigation should not be required.

g. The PCN must specify the duration of proposed temporary fills or structures in waters of the United States and include a restoration plan showing how all temporary fills and structures in waters of the United States would be removed and the area restored to pre-project conditions to the maximum extent practicable.

h. If any federally listed proposed, threatened, or endangered species or proposed or designated critical habitat might be affected by the activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. You must provide this office with the appropriate documentation demonstrating compliance with the requirements of the ESA (see 33 CFR 330.4(f)(1)).

i. If the activity might have the potential to cause effects to a historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. You must provide this office with the appropriate documentation demonstrating compliance with the requirements of Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)).

j. If the activity might affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council, the PCN shall include an EFH assessment and analysis of effects of the proposed action on EFH, in accordance with 50 CFR § 600.920(e). You must provide this office with the appropriate documentation demonstrating compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

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k. If an activity is proposed in or that might affect a component of the National Wild and Scenic River System or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” that would be impacted.

l. For an activity that requires Section 408 permission from the Corps, the PCN must include a statement confirming you have submitted a written request for Section 408 permission to the Corps office having jurisdiction over the federal project.

3. Where required by the terms of this RGP, you must notify this office by submitting a PCN as early as possible. This office will determine if the PCN is complete within 30 calendar days of the date of receipt. If the PCN is determined to be incomplete, we will notify you within 30 days to request the additional information necessary to make the PCN complete. Generally, we will request additional information necessary to make the PCN complete only once. However, if you do not provide all the requested information, then we will notify you that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received.

4. Activities requiring PCN may not proceed under the authority of this RGP until you have been notified, in writing, by this office that the activity is authorized.

FURTHER INFORMATION:

1. Congressional authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

2. Limits of this authorization:

a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law.

b. This RGP does not grant any property rights or exclusive privileges.

c. This RGP does not authorize any injury to the property or rights of others.

d. This RGP does not authorize interference with any existing or proposed federal project.

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3. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's data: The determination of this office that an activity is not contrary to the public interest was made in reliance on the information you provided.

5. Re-evaluation of RGP decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your PCN proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate.

You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

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6. Discretionary Authority: This office has the discretion to suspend, modify, or revoke authorizations under this permit. This discretionary authority may be used by us to further condition or restrict the applicability of this permit for cases in which we have concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should we determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to waters of the United States or otherwise be contrary to the public interest, we will modify the authorization to reduce or eliminate those adverse effects or notify you that the proposed activity is not authorized by this permit and provide instructions on how to apply for authorization under another type of DA permit. Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from us, such as a Nationwide Permit, Regional General Permit, Letter of Permission, or Standard Permit. We will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. We may include additional special conditions to a verification under this permit to ensure the activity has minimal impact. We may also restore authorization under this RGP at any time we determine the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. We may also use our discretionary authority to modify, suspend, or revoke this permit at any time.

PERMIT DURATION: This permit is valid for five years from issuance and will expire on July 13, 2028. We may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. If we have not reissued the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended, or revoked by us at any time deemed necessary. In such instance, we will issue a public notice concerning the proposed action. This RGP may be reissued, after public notice and documentation of the decision. Activities requiring PCN must be verified in writing by this office. Verification letters are valid till the expiration date of this RGP.

CONTACTS AND ADDITIONAL INFORMATION:

For questions, please contact the appropriate District office below.

U.S. Army Corps of Engineers
Los Angeles District, Regulatory Division
915 Wilshire Blvd., Suite 930
Los Angeles, California 90017
Office: (213) 452-3425
Email: SPLPermitInquiries@usace.army.mil
Website: <https://www.spl.usace.army.mil/Missions/Regulatory/>

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U.S. Army Corps of Engineers
 Sacramento District, Regulatory Division
 1325 J Street, Room 1827
 Sacramento, California 95814-2922
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U.S. Army Corps of Engineers
 San Francisco District, Regulatory Division
 450 Golden Gate Ave., 4th Floor
 San Francisco, California 94102-3404
 Office: (415) 503-6795
 Email: cespn-regulatory-info@usace.army.mil
 Website: <https://www.spn.usace.army.mil/Missions/Regulatory/>

This RGP becomes effective when the federal officials, designated to act for the Secretary of the Army, have signed below.



David J. Castanon
 Chief, Regulatory Division
 Los Angeles District

13 JULY 2023
 Date



for Michael S. Jewell
 Chief, Regulatory Division
 Sacramento District

13 JULY 2023
 Date



James C. Mazza
 Chief, Regulatory Division
 San Francisco District

13 JULY 2023
 Date

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