



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310-0108



REPLY TO
ATTENTION OF

14 APR 1993

Mr. Joseph E. Doddridge
Acting Assistant Secretary for Fish
and Wildlife and Parks
U. S. Department of the Interior
Washington, D. C. 20240

Dear Mr Doddridge:

Thank you for your letter of March 15, 1993, in which you requested higher level review of issues related to a permit application being considered by the Army Corps of Engineers Sacramento District. The project, which is proposed by Elliott Homes, involves the filling of 17.14 acres of wetlands to construct the Churchill Downs development. Your request was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Army and the Department of the Interior (DOI).

Part IV of the MOA establishes procedures for elevation of specific individual permit cases. To satisfy the explicit requirements for elevation, the permit case must pass two tests: 1) the proposed project would occur in aquatic resources of national importance (ARNIs), and 2) the project would result in unacceptable impacts to ARNIs.

We have carefully reviewed the concerns raised in your letter and the Sacramento District's decision documents for this case. Our review included a joint on-site meeting with U. S. Fish and Wildlife Service (FWS) staff, the District, the applicant and several wetlands consultants. Based on our evaluation we have concluded that the majority of vernal pools on the Churchill Downs site qualify as ARNIs, including the approximately five acres adjacent to the on-site preserve in the northwest portion of the project area. Therefore, the first part of the ARNI test has been met. We recognize that including these additional five acres as ARNIs, while appropriate, is inconsistent with our previous determination in the Environmental Protection Agency's (EPA) request for elevation on this case. However, our field visit and additional discussions with vernal pool experts lead us to conclude that there is no significant ecological difference between the areas that we originally designated ARNIs and the five acres that remain in question. In future Section 404(q) MOA elevation requests, a Washington level representative of this office will conduct an on-site meeting with appropriate parties.

Regarding the second part of the ARNI test, we have concluded that sufficient questions remain concerning the restoration and creation of vernal pools to warrant additional evaluation before a final determination on the impacts to filling the additional five acres of ARNI vernal pools can be made. In addition, as explained below, further evaluation of the practicability of avoiding the five acres is also required.

In light of the above, we will give the District guidance, pursuant to MOA Part IV, Paragraph 3(g)(2), that must be utilized in reaching a final permit decision. This guidance will include: 1) a requirement to reevaluate the practicability of avoiding impacts to the approximately five acres of vernal pools and 60 acres of associated uplands in northwest part of the property adjacent to the applicant's proposed preservation area. This reevaluation is particularly important in light of new information concerning the potential for rezoning and a subsequent increase in the number of housing units allowed within the northwest portion of the site; 2) a requirement to reevaluate the compensatory mitigation plan (if it is determined that it is not practicable to avoid vernal pools) based on input from the Corps Waterways Experiment Station, FWS, EPA, and non-Federal vernal pool experts. Special attention will be given to the development of success criteria, monitoring protocols and impacts to candidate species. Based on the final plan all compensatory mitigation for impacts to ARNI vernal pools at the Churchill Downs site will be completed and monitored for a minimum of two years before filling of the ARNI pools can occur. We will provide you a copy of the specific guidance provided to the Sacramento District as soon as it is finalized.

Your interest and efforts in raising this case to our attention are appreciated. We are fully committed to working with DOI in efficiently and effectively administering the regulatory program. Should you have any questions or comments concerning the Elliott Homes permit elevation, or the program in general, do not hesitate to contact me or Mr. Michael Davis, my Assistant for Regulatory Affairs, at (703) 695-1376.

Sincerely,



G. Edward Dickey
Acting Assistant Secretary of the Army
(Civil Works)