



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



REPLY TO
ATTENTION OF

07 JUN 1993

Mr. Donald J. Barry
Acting Assistant Secretary for
Fish and Wildlife and Parks
Department of the Interior
Washington, D. C. 20240

Dear Mr. Barry:

This is in response to Mr. Thomas Williams' letter of May 6, 1993, in which he requested higher level review of issues related to a Department of the Army permit being considered by the Army Corps of Engineers Norfolk District. The permit would authorize the discharge of dredged or fill material into 5.9 acres of waters of the United States, including forested wetlands. The permit is associated with the Greensprings Plantation development which consists of two golf courses and a residential subdivision within a 1,402-acre tract in James City County, Virginia. Mr. Williams' 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 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 substantial and unacceptable impacts to ARNIs.

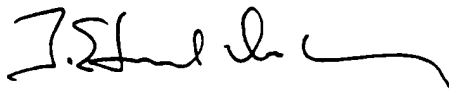
We have carefully reviewed the concerns raised in the May 6 letter and the Norfolk District's decision documents and draft permit for this case. Our review included a joint on-site meeting with Fish and Wildlife Service (FWS) staff, the applicant, and the district. Based on our evaluation, we have concluded that many of the forested wetlands adjacent to Powhatan Creek within the 1,402-acre tract would qualify as ARNIs. We could not, however, conclude that the specific forested wetland areas to be affected by the filling of 5.9 acres constitute ARNIs. These areas have been substantially degraded from relatively intense logging that occurred from 1979 to 1985. In light of this information, the first part of the elevation test has not been met.

While additional review pursuant to the MOA is not required, I will note that in this case we share concerns over the use of upland forest for wetlands creation. We believe that all appropriate and practicable compensatory mitigation options should be considered fully, including off-site restoration options. The fundamental objective must be to obtain the most environmentally beneficial compensatory mitigation plan that is practicable. Specifically, in the Greensprings Plantation case we were concerned that careful attention had not been given to potential off-site restoration alternatives. As a result of this concern, the district has initiated discussions with the applicant, the FWS, and the State of Virginia Water Quality Control Board to revise the mitigation plan. I understand that an off-site tract of prior converted cropland that may be suitable for restoration has been located. This approach would preserve an additional 16.6 acres of uplands on-site as requested in the May 6 letter. The district will continue to work with the FWS as the final mitigation plan is completed.

It is important to point out that even if the 5.9 acres to be affected constituted ARNIs, we could not have concluded that the permitted activity would have resulted in substantial and unacceptable impacts to ARNIs. We believe that the current mitigation proposal will compensate for the wetland losses associated with the permitted part of the project. As noted above, the district is working to improve the environmental benefits of the plan by pursuing off-site restoration in lieu of on-site creation. Further, we do not agree that, in this case, the dry impoundments will substantially impact the 7.7 acres of beaver dam wetlands. Corps wetlands experts have indicated that the duration and frequency of runoff into the impoundments will not adversely impact the existing wetlands. In addition, the on-site preservation of approximately 300 acres of forested wetlands and 250 acres of uplands in a conservation easement will provide for substantial protection of the wetland resources in the Powhatan Creek watershed, including ARNI wetlands. This approach appears to be consistent with the objectives of both the Emergency Wetlands Resources Act and the North American Waterfowl Management Plan and our desire to take a more holistic approach to wetlands protection.

The DOI's interest and efforts in raising this case to our attention are appreciated. In my opinion, our discussions were constructive and professional and improved the environmental benefits of the mitigation plan. Should you have any questions or comments concerning this elevation, or the program in general, do not hesitate to contact me, or Mr. Michael Davis, Assistant for Regulatory Affairs, at telephone (703) 695-1376.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Edward Dickey", with a long horizontal flourish extending to the right.

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