



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
CIVIL WORKS
108 ARMY PENTAGON
WASHINGTON DC 20310-0108



REPLY TO
ATTENTION OF

21 SEP 1994

George T. Frampton, Jr.
Assistant Secretary for Fish
and Wildlife and Parks
U. S. Department of the Interior
Washington, D.C. 20240

Dear Mr. Frampton:

This is in response to your letter of August 22, 1994, in which you requested our review of issues related to a Department of the Army permit application being considered by the Army Corps of Engineers Pittsburgh District. The permit would allow Mr. George B. Zamias to fill 12.7 acres of wetlands to enlarge the Meadville Mall Shopping Center in Crawford County, Pennsylvania. An estimated 40,000 cubic yards of material would be required to fill the wetlands and prepare the site.

Your request for elevation was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Interior and the Department of the Army. Your request was based on the Fish and Wildlife Service's concerns about site values and impacts, mitigation, and the alternative approved by the Corps District. Part IV of the MOA requires that a case must pass two tests to be elevated: 1) the case must involve aquatic resources of national importance (ARNIs); and 2) the case must result in unacceptable adverse impacts to ARNIs.

We have carefully reviewed the concerns raised in your letter, the analysis you provided, the Pittsburgh District's decision documents and draft permit. We had staff level meetings with your representatives from the field at the site and here in Washington, concerning the case. Based on our evaluation, we find that the District's permit decision will not result in unacceptable adverse impacts to aquatic resources, after consideration of the proposed mitigation. The following factors were important to these findings.

From a historic perspective the resources that existed on the site were common in the local area and were degraded by human activities. The wetlands currently on the site appear to be the result of the activities that occurred during the original mall construction and the applicant's activities in 1987. The clearing and grubbing that was stopped by the Corps in 1987 changed the landform with very little deposition of fill material. The resulting conditions now support a diversity that appears to be unique for such a small area.

The types of wetlands currently on the site are considered common resources in the county. The applicant conducted a survey for comparable wetlands within a 50 mile radius of the mall location. Those findings indicated that each wetland type found on the mall site is also found in relatively large areas elsewhere in the vicinity. The site diversity in wetland types makes an ARNI determination difficult, because that diversity is of such local importance. Because the proposal does not yield unacceptable impacts on the area, we did not reach a conclusion whether the local diversity of common wetland types represent an ARNI. We would be pleased to discuss this consideration with you and the other interested agencies in a more general framework.

Based on a consideration of the mitigation to be required, we find there is no net loss of wetlands values and thus, there are no unacceptable adverse impacts to the aquatic resources. The quantity of compensatory mitigation being required by the District and by the State through its permitting authority, appears to be adequate in offsetting the acreage losses that will occur on the site. The quality of that mitigation, on the other hand, is of great concern in our decision. The situation appears to demonstrate that it is possible to create, through minor land alterations, the high diversity seen at this site. However, that diversity did not occur by design. To compensate for the loss of this important local diversity, the remaining wetlands on the applicant's property must be protected, and off site mitigation carefully designed and implemented. The District must use the necessary expertise, including that of the Fish and Wildlife Service, to ensure that the mitigation plans of the applicant are adequate.

Because there are neither unacceptable adverse impacts to the aquatic resources, nor a net loss of wetlands, we have decided not to review this case, and are notifying the Corps that the District may proceed with final action on the permit decision. We will, however, caution them that approval of the applicant's mitigation plan must include full consultation with the Fish and Wildlife Service.

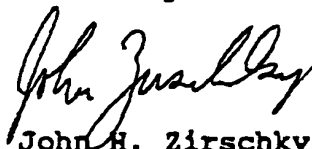
There were other concerns expressed in your letter, and our views on those follow. The District considered numerous mall designs during their evaluation. We concur in the Corps' determination that what is to be approved represents the least environmentally damaging, practicable alternative for the expansion of the mall. The additional alternative discussed in your letter, when considered with a view toward the need for adequate parking,

would require additional space to be practicable. That addition would increase the impacts to the wetlands, making the alternative comparable to other alternatives considered in the District's decision document. Therefore, we see no need to require a reconsideration of alternatives.

Finally, you expressed concern about the District issuing the permit before a mitigation plan has been prepared. The amount and type of mitigation to be required have been determined during the evaluation process. The permit conditions will require that a plan be prepared by the applicant and approved by the District, such that the mitigation work is undertaken coincidentally with construction of the mall expansion. There is also a substantial bond required to ensure the work is accomplished and remains viable. These measures are consistent with current policy, which reflects our concern that the regulated public must be held accountable for mitigation commitments, without facing continuing uncertainty that a permit will ever be issued. The terms of the permit are sufficient to allow mitigation planning and site selection to be based on defined impacts and defined expectations.

Because we recognize the importance of these wetlands to the local area, we have been careful to satisfy ourselves that adequate steps have and will be taken to ensure that there is no net loss of wetland values resulting from this permit action. The efforts of you and your staff in bringing this case to our attention and their efforts in the future development of an adequate mitigation plan, reflect the importance we all place on protecting aquatic resources. Should you have any questions or comments concerning our decision in this case, do not hesitate to contact me or Mr. Jack Chowning at (202) 272-1725.

Sincerely,



John H. Zirschky
Acting Assistant Secretary of the Army
(Civil Works)