

DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
WASHINGTON, D.C. 20314-1000

Churchill Downs - R9



REPLY TO  
ATTENTION OF:

27 APR 1993

CECW-OR

MEMORANDUM THRU COMMANDER, SOUTH PACIFIC DIVISION

FOR COMMANDER, SACRAMENTO DISTRICT

SUBJECT: Request for Permit Elevation, Elliott Homes

1. On 14 April 1993, the Acting Assistant Secretary of the Army (Civil Works) responded (encl) to the request by the Department of the Interior (DOI) for elevation of the U.S. Army Corps of Engineers Sacramento District's proposed decision to issue a permit to Elliott Homes pursuant to Section 404 of the Clean Water Act.

2. The DOI request was made pursuant to Part IV of the Section 404(g) Memorandum of Agreement between the Department of the Army and the Department of the Interior regarding review of an individual permit case. The main issues presented by the DOI for our consideration were based on their conclusion that unacceptable substantial adverse impacts to aquatic resources of national importance would occur. These included adequacy of the compensatory mitigation, alternatives analysis and impacts to potential and candidate Federal threatened and endangered species.

3. The Acting Assistant Secretary of the Army (Civil Works) letter advised the DOI that they concurred with the DOI that the five acres of vernal pools in question were aquatic resources of national importance. The Acting Assistant Secretary of the Army (Civil Works) further advised that additional guidance would be provided to the District in accordance with Part IV, paragraph 3(g)(2) of the Memorandum of Agreement.

4. The District, prior to reaching a final decision, shall reevaluate fully the practicability of avoiding impacts to the approximately five acres of vernal pools and 60 acres of associated uplands in the northwest part of the property adjacent to the applicant's proposed preservation area. It appears that it may in fact be practicable to avoid such areas. This is particularly true in light of new information concerning the potential for rezoning to increase the number of housing units allowed within the northwest portion of the site.

5. The District shall also reevaluate the compensatory mitigation plan (if it is determined that it is not practicable to avoid the five acres of vernal pools) based on input from the Corps Waterways Experiment Station, Fish and Wildlife Service,

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SUBJECT: Request for Permit Evaluation, Elliott Homes

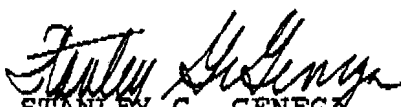
Environmental Protection Agency, and non-Federal vernal pool experts. Special attention must be given to developing success criteria, monitoring protocols and impacts to candidate species. Based on the final plan, which should be incorporated into the permit, all compensatory mitigation for impacts to aquatic resources of national importance vernal pools at the Churchill Downs site must be completed and monitored for a minimum of two years before filling of the aquatic resources of national importance pools can occur. This should not substantially impact the applicant since he has indicated that he does not plan to complete the development for approximately eight years. In addition, the permit will allow the applicant to develop other parcels of the property. This approach, however, will allow the applicant to demonstrate more completely the success of vernal pool compensatory mitigation and will potentially afford such mitigation more credibility with the Corps, resource agencies and the environmental community.

6. We recognize the need for additional information to facilitate future evaluations for projects which may impact vernal pools. The division will request assistance from the Waterways Experiment Station to perform an analysis of selected vernal pool mitigation sites within the division. The Corps will also sponsor a workshop to develop general criteria regarding vernal pool mitigation for future decisions. Please contact our office if you need assistance to facilitate the Waterways Experiment Station review of this matter.

7. To be consistent with information obtained through the scientific evaluation identified in paragraphs 5 and 6 above, we recommend that the District encourage the applicant to aggressively pursue his effort to create a mitigation bank. The District's coordination of this effort should include State and Federal resource agencies and, to the degree practicable, acknowledged vernal pool experts. The applicant indicated that sufficient land was acquired to develop mitigation for future projects. Early development of the mitigation bank would allow sufficient time to demonstrate the effectiveness of vernal pool restoration/creation prior to impacts associated with future permitted activities.

8. If you have any comments or questions, please contact Mr. Victor Cole at (202) 272-0201.

Encl

  
STANLEY G. GENEZA  
Brigadier General (P), USA  
Director of Civil Works