



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



REPLY TO
ATTENTION OF

27 JUN 1994

Honorable Robert Perciasepe
Assistant Administrator for Water
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Perciasepe:

This is in response to your letter of May 26, 1994, in which you requested our review of issues related to a Department of the Army permit being considered by the Army Corps of Engineers Alaska District. The permit would allow Mr. Mike Cusack to construct a residential development within 15 acres of wetlands associated with Klatt Bog in Anchorage, Alaska. The project would result in the excavation of 105,000 cubic yards of wetland substrate and the backfilling with approximately 119,500 cubic yards of fill material.

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 Army and the Environmental Protection Agency (EPA). EPA's concerns were primarily associated with the direct and secondary impacts to the Klatt Bog wetland system and the alternatives analysis conducted by the district. 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 must involve an aquatic resource of national importance (ARNI); and 2) the project must result in substantial and unacceptable impacts to the ARNI.

We have carefully reviewed the concerns raised in your letter, the Alaska District's decision documents and draft permit. Mr. Michael Davis, Assistant for Regulatory Affairs, also met personally with Corps field staff. EPA staff declined an invitation to this meeting. Based on our evaluation, we believe that portions of Klatt Bog do qualify as an ARNI. Specifically, we believe that the patterned ground or "core" of Klatt Bog qualifies as an ARNI. We do not believe, however, that the actual project development site involves an ARNI. We do agree that the proposed project could potentially impact the ARNI portion of Klatt Bog through hydrologic

alterations that may contribute to further drying of an already impacted wetland system. The potential for such hydrological alterations and subsequent effects on the ARNI portion of the bog must be evaluated fully and will be discussed below.

We agree with some of the EPA's concerns regarding the district's alternative analysis. Specifically, based solely on the discussion in the decision document, the district's analysis does not appear to have demonstrated that the applicant's proposal is the least environmentally damaging practicable alternative. We will direct the district to clarify its decision document in this area by explaining more fully how the analysis was conducted. Further, we will instruct the district to ensure that undue deference was not given to the applicant's preferred alternative. I will note that after coordination with the Alaska District, we gained a better understanding of the district's consideration of alternatives. However, the full extent of their evaluation and analysis of alternatives was not documented and must be clarified.

With respect to the potential for substantial adverse impacts to the ARNI portions of the bog, we generally agree with the district that the proposed project should not further degrade the bog. It is predicted that the project may actually improve wetland conditions in the bog. The district's decision includes the preservation of approximately 18 acres of the patterned ground area, excavation of two open water ponds (one acre total) within the patterned ground area for habitat enhancement, preservation of a 250-300 foot black spruce buffer between the residential area and patterned ground area, and construction of a berm and fence to restrict human and domestic animal access to the preservation area. The construction of the berm will also have other potential hydrologic benefits by redirecting the subsurface flow towards the "core" area. Several drainage ditches and other factors have contributed to a drying effect to Klatt Bog. Although where the berm will be constructed is a relatively limited area, this action, in conjunction with other restorative measures, included in this proposed permit and others, may contribute to the restoration of the bog's hydrology. The restoration of Klatt Bog's hydrology, along with the preservation of the patterned ground area may

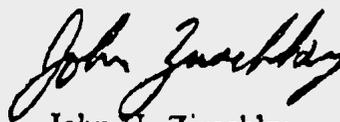
result in a reversal of the trend towards a dryer plant community and associated wildlife species populations. This reversal should result in habitat which would more closely reflect natural wetland functions, including waterbird habitat.

Notwithstanding the above, we believe that because of the importance of the "core" portion of the bog, additional precautions should be taken to assure that the district's assumptions on indirect impacts are correct. In this regard, we will instruct the district to either: 1) develop, in coordination with EPA, a monitoring and contingency plan that addresses potential hydrologic impacts in the bog if the Klatt Bog site remains the least damaging practicable alternative (this plan will be incorporated by reference into the permit as a special condition); or 2) require the applicant, in coordination with the district and EPA, to conduct a more detailed evaluation of the effectiveness of the berm design in preventing negative impacts to the "core" area hydrology.

In light of the findings summarized above, and in accordance with the MOA, we will provide the Corps with case-specific guidance regarding documentation of the alternatives analysis and development of a monitoring and contingency plan special condition, or in the alternative, a more detailed evaluation of the potential hydrologic impacts. The district will complete these requirements prior to making a final permit decision.

Although in this particular case we disagree with EPA on a few issues, we share fully your desire to protect the Nation's aquatic resources and the public interest. The efforts of you and your staff in raising this case to our attention are appreciated. Should you have any questions or comments concerning our decision in this case, do not hesitate to contact me or Mr. Davis at (703) 695-1376.

Sincerely,



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