



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

16 JUL 1992

REPLY TO
ATTENTION OF:

CECW-OR

MEMORANDUM THRU COMMANDER, LOWER MISSISSIPPI VALLEY DIVISION
FOR COMMANDER, MEMPHIS DISTRICT

SUBJECT: Permit Elevation Review, Tennessee Department of
Transportation

1. On 14 January 1992 we notified you of our intent to review the Tennessee Department of Transportation (TDOT) proposal to extend Paul Barrett Parkway near Millington, in Shelby County, Tennessee. Our initial review was prompted by a request from the Environmental Protection Agency (EPA) for review by the Office of Assistant Secretary of the Army (Civil Works) (OASA(CW)) through a 404(q) elevation. The OASA(CW) advised the EPA that the request for elevation was not granted. However, the OASA(CW) acknowledged the issues raised and determined that further review was necessary prior to final permit decision. The OASA(CW) determined that the TDOT furnished insufficient information concerning alternatives and the mitigation plan to facilitate a final permit decision by the Army Corps of Engineers Memphis District.

2. HQUSACE has determined that guidance is needed for all Major Subordinate Commands (MSC's) and District Commands (DC's) regarding costs incurred by applicants prior to submission of an application to the Corps for review and appropriateness of utilizing these costs in the alternatives analysis required by the Section 404(b)(1) Guidelines. We anticipate that a draft Regulatory Guidance Letter (RGL) for review by MSC's and DC's will be available in the near future. In the meantime, we are providing case specific guidance concerning practicable alternatives and adequate compensatory mitigation in this memorandum and the District should proceed accordingly. In addition to the development of an RGL concerning preapplication expenditures by applicants, we have recognized the need for compensatory mitigation guidance. A draft RGL addressing mitigation will also be available for MSC and DC review in the near future.

3. On 24 January 1992 and 17 February 1992 we advised the TDOT of our decision to review the case and requested additional information concerning the alternatives analysis. Specifically, we requested that the TDOT provide information concerning three alternatives. The TDOT alignment at issue during the 404(q)

CECW-OR

SUBJECT: Permit Elevation Review, Tennessee Department of Transportation

elevation, an alignment 250 feet south of this alignment and a third alignment further south that would avoid all wetland areas in the eastern portion of the roadway were identified. We requested that the TDOT provide itemized costs for each of the aforementioned potential highway alignments for two reasons: (1) to determine if costs incurred by the TDOT prior to its submission of the permit application were inappropriately applied in support of the TDOT's assertion that there were no practicable alternative highway alignments, and (2) if costs common to all potential alignments (i.e., road user costs) were inappropriately considered in practicability determinations. On 8 June 1992 the TDOT furnished the requested information on alternatives (copy enclosed). We specifically did not request information on mitigation. Such information normally would not be requested until the least environmentally damaging practicable alternative is selected.

4. We have completed our review, in accordance with 33 CFR 325.8, of the District's proposed decision and the information provided by the TDOT concerning the alternatives analysis. Based on our review, we believe that an alternative other than that preferred by the TDOT, which further avoids and minimizes wetland impacts is available and practicable to the TDOT. After review of alternatives A, B, and C, we believe that further alignment refinement or a combination of these alternatives will likely prove practicable. An alignment located south (between B and C) such that additional forested wetlands west of Sledge Road would be avoided appears practicable. The portion of the alignment immediately east of Sledge Road could also be shifted south, from the TDOT preferred alignment, in an effort to avoid wetlands to the maximum extent practicable. However, the number of residential relocations should be considered with any of the alignments. We believe that maintaining the eastern terminus of the project between alignment A and B but as near as possible to alignment A while avoiding to the maximum extent practicable the stream channel would be both less damaging and practicable. This alignment would create a gentle curve south of the forested wetlands west of Sledge Road and a portion of the wetlands east of the road while attempting to minimize the number of residential relocations.

5. There may be reasons external to home relocation and wetlands which would preclude a modified alignment as described in paragraph 4 above. If that is the case, then we believe that alternative B is practicable in the context of an application from a State Department of Transportation. As a result, we

CECW-OR

SUBJECT: Permit Elevation Review, Tennessee Department of Transportation

believe that an alternative exists which further minimizes impacts to the aquatic ecosystem while not dramatically increasing impacts to residential relocations. It is our understanding that the TDOT is completing the design for phase III of the Paul Barrett Parkway. Premature design of the phase III will not be used as a factor to determine the alignment of the phase II, which is the subject of this review. Moreover, the TDOT should be encouraged to coordinate with the District earlier in the process on Phase III so that it does not, again, run afoul of overdesign prior to application.

6. Although the TDOT provided the alternatives analysis information in the manner we requested, they included items such as road user cost, miscellaneous right-of-way cost and additional engineering cost that are either common to all potential alignments (i.e., road user costs) or related to the preapplication selection and finalization of the TDOT's preferred alignment. (Such costs as they relate to differences in design, right-of-way cost, etc., of each alternative would be acceptable to consider.) In addition, there is an increase in the total cost of the right-of-way cost for alignment B because of the TDOT relocation of a residence from alignment A into alignment B. The above costs are all related to the TDOT's efforts prior to submission of a permit application to the Corps and will not be factored into the total cost of each alternative for the purposes of determining practicability.

7. We have determined that further refinement of an alignment is appropriate and would provide the least environmentally damaging practicable alternative. We have also determined that it would be appropriate for the Memphis District to determine the final route of the alignment, in conjunction with the TDOT, based upon the above discussion of our findings. The District should also determine appropriate compensatory mitigation requirements. Regarding mitigation, HQUSACE staff investigated the site in December 1991 and June 1992 and it appears that the technical aspects of the TDOT mitigation proposal require additional analysis. Specifically, the planting of oak acorns in certain locations does not appear to be appropriate due to the prolonged flooding. The TDOT should be required to perform an analysis that would be the basis for the District to determine where seeding or planting should occur and the appropriate wetland plant species in relation to the hydrologic regime. A determination as to the appropriateness of planting oak acorns or other tree seeds should be adequately addressed.

CECW-OR

SUBJECT: Permit Elevation Review, Tennessee Department of
Transportation

8. The District should complete its review in a timely manner after receiving the necessary information from the TDOT. If you have any questions or comments, please contact Mr. John F. Studt, at (202) 272-0199.

FOR THE COMMANDER:

Encl

Arthur E. Williams
ARTHUR E. WILLIAMS
Major General, USA
Director of Civil Works