



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
WASHINGTON, DC 20310-0103



REPLY TO  
ATTENTION OF

11 JAN 1993

Ms. Martha G. Prothro  
Acting Assistant Administrator for Water  
Environmental Protection Agency  
Washington, D. C. 20460

Dear Ms. Prothro:

Thank you for your letter of December 10, 1992, in which you requested higher level review of issues related to a permit application being considered by the Army Corps of Engineers Sacramento District. The project, which is proposed by Elliott Homes, involves the filling of 17.14 acres of wetlands to construct the Churchill Downs development. Your 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 Environmental Protection Agency (EPA) regarding review of an individual permit case.

Part IV of the MOA establishes procedures for elevation of specific individual permit cases. To satisfy the explicit requirements for elevation, the permit case must result in unacceptable adverse effects to aquatic resources of national importance.

We have carefully reviewed the concerns raised in your letter and the Sacramento District's decision documents for this case. Our review included a joint teleconference with your wetlands staff, the District, and the EPA Region IX staff. Based on our evaluation, we agree that over 50 percent of the vernal pools on the 640-acre project site would qualify as aquatic resources of national importance (ARNI). The vernal pool complexes located within the site that, in our opinion, qualify as an ARNI are limited to the areas where concentrations of deeper vernal pools are interconnected and contain high plant diversity. This is consistent with our belief that all types of aquatic resources, including vernal pools, have functions and values that vary in degree of importance. The district's proposed decision requires avoidance and preservation of these areas as well as the surrounding uplands. Specifically, 22 acres of avoided ARNI vernal pools will be preserved along with an additional 115 acres of vital associated uplands that support these wetlands. The remaining 17.14 acres

of wetlands on the site have been determined to be of substantially lower resource value and would not constitute an ARNI. These areas, which have been partially impacted by past agricultural activities, do not have the same density, depth, and plant and animal diversity as the 22 acres considered an ARNI. In light of the avoidance and preservation of the ARNI wetlands, we have determined that additional case-specific guidance pursuant to Part IV of the MOA is not necessary or appropriate. In this regard, I will direct the district to proceed with a final permit decision consistent with Part IV, paragraph 3(h) of the MOA.

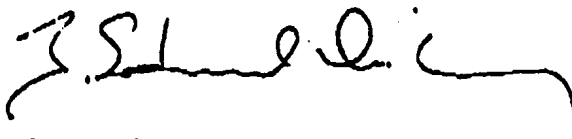
We do not believe that it would be appropriate or practicable to require the additional five acres of non-ARNI wetlands avoidance noted in your letter. To do so would require an additional 60 acres of uplands which would render the project inviable. In addition, we believe that the district has fully considered the impact of the project on candidate endangered species. The district will continue to work with the U. S. Fish and Wildlife Service to ensure compliance with the Endangered Species Act.

I want to assure you that the Department of the Army shares your concerns over the protection of the Nation's valuable aquatic resources, including vernal pools. We believe the district's decision recognized the importance of the vernal pools that constitute an ARNI and appropriately avoided such areas. Further, the district required that the applicant reduce the wetlands fill area by approximately 40 percent and increase the total area preserved by over 320 percent. Although it was determined that the functions and values of the resource were lower (i.e., non-ARNI), the district required off-site mitigation designed to create wetlands of higher quality and quantity than those destroyed by the permitted fill. The off-site mitigation will involve creating and restoring 22.63 acres of wetlands with an additional 65 acres of preserved contiguous uplands. Based on the comprehensiveness of the district's mitigation requirements, including the selection of an off-site area that once exhibited vernal pools and has the necessary underlying clay layer, we believe that overall wetlands functions and values will be enhanced. We have discussed with the district the importance of complete success of the mitigation plan. A summary of the mitigation proposed by the applicant and that to be required by the district is provided in the enclosed table.


The additional issues raised in your letter are not addressed in this response since additional Part IV case-specific guidance is not required. However, we would be pleased to discuss issues such as practicable alternatives pursuant to Part III of the MOA. Mr. Michael Davis, my Assistant for Regulatory Affairs, will contact your staff to schedule a meeting for such discussions.

Your interest and efforts in raising this case to our attention are appreciated. We are fully committed to working with EPA in efficiently and effectively administering the regulatory program. EPA's important role in the program is recognized and will continue to be acknowledged by Corps field offices. Should you have any questions or comments concerning the Elliott Homes permit elevation, or the program in general, do not hesitate to contact me or Mr. Davis at (703) 695-1376.

Sincerely,

*for*   
Nancy P. Dorn  
Assistant Secretary of the Army  
(Civil Works)

Enclosure

  
G. Edward Dickey  
Acting Principal Deputy Assistant Secretary  
(Civil Works)

## ELLIOTT HOMES 404(q) ALTERNATIVES FACT SHEET

**DESCRIPTION OF PROJECT:** Residential and commercial development (with associated infrastructure) within a 640-acre site in southeastern Sacramento County, California.

<b>RESOURCES ON-SITE:</b>	vernal pools:	30.54 acres
	seasonal wetlands:	<u>8.45 acres</u>
	Total	38.99 acres

**ALTERNATIVES COMPARISON (acres):**

	<u>APPLICANT'S</u>	<u>CORPS</u>
Proposed Wetland Fill <sup>1</sup>	27.34	17.14 <sup>2</sup>
<hr/>		
On-site Wetlands Preservation	11.86	22.06
Wetlands Creation <sup>3</sup>	36.69	22.63
Total Creation/ Preservation	48.55	44.69
<hr/>		
Total On-site Preservation Area	69.25	137.00
Total Off-site Preservation Area	0.00	88.00
Total Preservation Area	69.25	225.00

<sup>1</sup> 9.6 acres have been filled.

<sup>2</sup> 37 percent reduction required by Corps (Acreage includes 9.6 acres previously filled and proposed fill in 3.99 acres of vernal pools and 3.55 acres of seasonal wetlands).

<sup>3</sup> The applicant originally proposed wetlands creation within the on-site preservation area. The Corps required the creation in off-site preservation area to avoid potential hydrological impacts to the on-site ARNI wetlands.