



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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MAY 06 2015

Colonel Michael J. Farrell
U.S. Army Corps of Engineers
Sacramento District
1325 J Street
Sacramento, CA 95814

Subject: Public Notice (PN) SPK-2006-0082, Walkup Ranch Project, Lincoln, Placer County, CA

Dear Colonel Farrell:

Thank you for the opportunity to comment on the subject PN dated April 10, 2015. The applicant proposes to construct a 145-acre primarily residential development that would result in the permanent fill of approximately 10 acres of waters of the United States (waters), including 4.86 acres of wetlands, adjacent to Auburn Ravine in Lincoln, CA.

The following comments were prepared under the authority of, and in accordance with, the provision of the Federal Guidelines (Guidelines) promulgated under section 404(b)(1) of the Clean Water Act (CWA) at 40 CFR Part 230. Based on the available information, the EPA concludes that the applicant has not demonstrated compliance with the restrictions on discharges per the Guidelines. Specifically, the applicant has not: (1) submitted an Alternatives Analysis (AA) demonstrating that the proposed project is the least environmentally-damaging practicable alternative (LEDPA); or (2) provided adequate information regarding compensatory mitigation for unavoidable impacts.

This project is located in the "Potential Future Growth Area" of the Placer County Conservation Plan (PCCP). The PCCP will consider impacts to waters and listed species in the growth area using a watershed approach, including an in-lieu fee program for impact mitigation. This will provide permit applicants with a more streamlined consideration of on-site impact avoidance and mitigation strategy to comply with the Guidelines. In contrast, if the 404 permit for Walkup Ranch is processed prior to approval of the PCCP, all 404(b)(1) criteria would need to be addressed independently.

The overall project purpose for Walkup Ranch is to construct a residential development of 100-200 acres within Western Placer County. Pursuant to the Guidelines, if discharge is proposed for a special aquatic site (such as wetlands) and its purpose is not water-dependent (such as housing), practicable alternatives are presumed to exist unless clearly demonstrated otherwise. Under the Guidelines, the AA for this project must include both off-site and on-site alternatives. On-site alternatives must include a comprehensive evaluation of practicable avoidance configurations to eliminate or reduce direct, indirect, and cumulative impacts to waters, especially special aquatic sites such as wetlands. Any indirect impacts that cannot be avoided must be mitigated in addition to the unavoidable direct impacts.

It remains to be demonstrated that the avoidance of 10 acres of waters is impracticable or that indirect impacts have been minimized. For example, the AA should analyze reconfiguring the land use plan and altering housing densities to avoid all or portions of the three areas (in the north, west, and southwest

areas of the site) of concentrated seasonal wetlands. The site's largest aquatic feature is a long narrow pond of about 4.4 acres, much of which it appears the proposed final development footprint would avoid. However, the AA should also analyze options that would leave the entire existing pond undisturbed. The proposed reconfiguration of the pond, which would result in 1.62 permanent and 2.46 temporary acres of direct impacts, may also indirectly impact the adjacent wetlands by severing their hydrologic connectivity to the pond.

The applicant has not submitted a mitigation plan beyond a figure illustrating unspecified activity along an approximately 10-acre area of Auburn Ravine on the adjacent Epick South project site. Likely comprised of stream enhancement and riverine wetland enhancement, these activities may not appropriately replace the seasonal wetland or pond functions lost at the development site. Any subsequent plan that pursues elaboration of the Auburn Ravine illustration will need to justify the use of what appears to be out-of-kind, permittee-responsible mitigation consistent with the 2008 Final Compensatory Mitigation Rule (Subpart J of the Guidelines at 40 CFR 230). The Rule encourages the use of a watershed approach and regional conservation planning over regionally fragmented, permittee-responsible mitigation, and authorizes the District Engineer to override this preference only when "a permittee-responsible project will restore an outstanding resource based on a rigorous scientific and technical analysis."

Given that additional avoidance and/or minimization of direct, indirect, and cumulative impacts may be necessary and practicable, a detailed discussion of compensatory mitigation actions is premature. However, based on the information currently available, EPA recommends the applicant develop a contingent mitigation proposal depending on the timing of permitting: purchase in-lieu fee credits under the PCCP, or, if the PCCP and ILF are not available at permitting, develop site-specific mitigation actions that meet each of the specific elements of a mitigation plan described at 40 CFR 230.94(c), and satisfy the Corps' South Pacific Division's Mitigation Ratio Setting Checklist (Checklist). The PN suggests the current mitigation is proposed based on acreage at a 1:1 ratio. In addition to being potentially inappropriate functionally, a 1:1 ratio is unlikely to be adequate under the Checklist.

In summary, the EPA recommends this project not be permitted as proposed, unless a viable PCCP framework becomes available. Absent the PCCP, permitting will require an AA that rigorously addresses practicable impact avoidance through examination of off-site and on-site alternatives, and the development of a compensatory mitigation plan that is consistent with regional conservation planning efforts, the Mitigation Rule, and the ratio setting Checklist.

Thank you for the opportunity to provide comments on the Public Notice. As additional information becomes available on this proposal, please contact Leana Rosetti of my staff at (415) 972-3070, or rosetti.leana@epa.gov.

Sincerely,



Jason Brush
Supervisor
Wetlands Section

Cc: William Ness, Corps of Engineers Sacramento Office