



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

20 MAY 1986

Honorable Jennifer Joy Wilson
Assistant Administrator for
External Affairs
Environmental Protection Agency
Washington, D.C. 20460

Dear Mrs. Wilson:

This is in regard to your April 29, 1986, letter requesting that I elevate the San Francisco District Engineer's decision on the proposed Oakland Airport expansion.

After careful review of the District Engineer's decision documentation and your April 29, 1986, request, I have decided to elevate the decision to the South Pacific Division Engineer, Brigadier General Donald J. Palladino.

This is the first request for elevation under the Memorandum of Agreement (MOA) our agencies negotiated last fall. I am impressed and pleased that the system is working well. Out of approximately 7,000 permit decisions made since the agreement was implemented, only one case has had unresolved issues meriting headquarters attention.

You requested elevation based on all three criteria; insufficient coordination, including a failure to resolve EPA stated concerns on compliance with the 404(b)(1) guidelines, significant new information, and issues of national importance. Also, you stated that your review indicated that an EIS is required for the project unless the mitigation is increased or the amount of fill reduced.

As you are aware, the Corps is required to weigh and balance benefits and detriments of proposals. As a result, it is possible that adverse effects will occur in some cases. However, this balancing only occurs after it has been determined that the project complies with the 404(b)(1) guidelines and NEPA. As you also are aware, the Corps of Engineers makes the final determination on compliance with the 404(b)(1) guidelines and is responsible under NEPA for determining the need for an EIS. In addition, each permit decision is reached on the merits of the specific case. Any precedents are established by regulation or policy guidance, not by individual case decisions.

The Division Engineer in his review will consider all of the comments you have made on the project, including the Region IX information you believe is new. Furthermore, the comments you have made on the need for an EIS were in response to the District Engineer's notice of intent to issue a permit. The Division Engineer will review the record and all of your agency's comments and make a determination on the need for an EIS.

I believe the record of this case clearly indicates that extensive coordination did occur at the field level and that the District Engineer was quite sensitive to the myriad complex and controversial issues. Efforts to develop mitigation appear to have been quite extensive.

While I have complete confidence that the District Engineer conducted a thorough, professional review, I believe that formal review by the Division Engineer is appropriate to ensure full documentation of how the views of EPA were considered in the development of mitigation, in the determination of compliance with the 404(b)(1) guidelines, and in the determination of the need for an EIS.

The Division Engineer will make his decision on the case in accordance with paragraph 7 of the MOA.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert K. Dawson", with a long horizontal flourish extending to the right.

Robert K. Dawson
Assistant Secretary of the Army
(Civil Works)