



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

MAY 19 2014

Kathy Norton
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Sacramento, California 95814

Subject: Final Environmental Impact Statement and Applicant's 404(b)(1) Alternatives Analysis for the Westbrook Project, Placer County, California (CEQ # 20140124)

Dear Ms. Norton:

The U.S. Environmental Protection Agency has reviewed the Final Environmental Impact Statement for the Westbrook Project pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. We also reviewed the Applicant's 404(b)(1) Alternatives Analysis, dated February 4, 2014. We appreciate efforts by the U.S. Army Corps of Engineers to coordinate with our agency throughout the environmental review process.

In our July 1, 2013 comment letter, we rated the Draft EIS *Environmental Objections – Insufficient Information* (EO-2) based on: (1) impacts to waters of the U.S., (2) the potential for the Proposed Action Alternative to be selected for implementation when it does not appear to be the Least Environmentally Damaging Practicable Alternative, and (3) the potential inability of the Proposed Action Alternative to achieve no net loss of wetland functions. While we appreciate the information that was added to the Final EIS on mitigation, our comments on impacts to waters of the U.S. and LEDPA selection have not been resolved in the Final EIS. For this reason, we have continuing objections to the proposed project. These and other outstanding issues are described below.

Impacts to Waters of the U.S.

EPA designated waters of the U.S. within the Westbrook Project site as Aquatic Resources of National Importance via April 28 and May 12, 2008 letters in response to the Public Notice for the Sierra Vista Specific Plan. The Westbrook Project is included within this ARNI designation because it was part of the Sierra Vista Project at the time the Public Notice was released. The Applicant's Proposed Action for the Westbrook Project would impact the largest quantity of aquatic resources of all of the alternatives evaluated. Neither the Final EIS nor the Applicant's 404(b)(1) analysis demonstrates that impacts to ARNI are being avoided to the maximum extent practicable.

Recommendation:

Please work with EPA through the 404(b)(1) process to ensure that impacts to waters of the U.S. are avoided to the maximum extent practicable, consistent with the Clean Water Act 404(b)(1) Guidelines. EPA is available to participate in conference calls and review documents.

Applicant's 404(b)(1) Alternatives Analysis

The Applicant's Alternatives Analysis does not clearly demonstrate that the Proposed Action Alternative is the LEDPA. The potential for the Proposed Action Alternative to be selected for implementation, when it does not appear to be the LEDPA, was one of the reasons we objected to the project in our Draft EIS comments. Per the 404(b)(1) Guidelines, only the LEDPA that achieves the overall project purpose, while not causing or contributing to significant degradation of the aquatic ecosystem, can be permitted by the Corps.

Overall Project Purpose and Screening Criteria

The Applicant's Alternatives Analysis screens alternatives based on whether they: (1) meet the City's adopted Blueprint Scenario, adopted Implementation Strategies and Smart Growth principles; (2) are fiscally sustainable in terms of providing sufficient tax revenue for the City; and (3) allow community facilities district funding of backbone infrastructure without burdening the property with excessive taxes. While we agree that consideration of local needs is an important part of determining the overall project purpose and range of alternatives, we disagree with their strict use as screening criteria unless they can be credibly shown to impact an alternative's practicability. The Alternatives Analysis does not adequately explain how these considerations affect practicability.

Corps regulations at 33 CFR 320.40 recognize appropriate deference to local land use decisions (such as the City of Roseville's Specific Plan and other planning documents), while acknowledging that the "preservation of special aquatic areas, including wetlands" can have overriding national importance that takes precedence over local land use decisions. Furthermore, in guidance issued on August 17, 1989 by the Assistant Secretary of the Army for Civil Works, following the national policy elevation by EPA and Fish and Wildlife Service of the permit case for the Hartz Mountain Development Corporation, Corps Headquarters determined that, "federal concerns over the environment, health and/or safety will often result in decisions that are inconsistent with local land use approvals. In this respect, the Corps should not give undue deference to HMDC or any other zoning body" [emphasis added]. The Corps must ensure that the overall project purpose and the screening criteria allow for a robust 404(b)(1) Alternative Analysis, consistent with the intent of the Guidelines.

Costs

The Applicant used the costs of the Proposed Project, as approved by the City in the Specific Plan, to represent "reasonable" and "typical" development costs. These costs were then used as a benchmark for evaluating the remainder of the alternatives. All alternatives to the proposed project were screened out due to "unreasonable" development costs, without showing why the Proposed Project represented an appropriate benchmark, or why increased costs made less environmentally damaging alternatives impracticable. The appropriate benchmark for costs is, indeed, what a "typical" applicant would bear, but one Applicant's assertion that the costs of its preferred alternative represent typical costs should not be accepted by the Corps unless verified by an independent third party assessment. Even if the Applicant's costs are demonstrated to be an appropriate benchmark, alternatives cannot be eliminated under the Guidelines simply because they are more expensive than the preferred alternative; they must be demonstrated to be *impracticably* more expensive.

Recommendation:

The Corps should conduct an independent Alternatives Analysis for the final 404(b)(1) decision document and not rely on the Applicant's Alternatives Analysis. Ensure that the project purpose and screening criteria are broad enough to allow for a robust analysis, and consider the practicability of those alternatives that avoid more waters of the U.S. Given the Aquatic

Resource of National Importance status of the impacted resources, please continue to work with EPA through the 404(b)(1) process. We are available to participate in conference calls and review draft documents.

Selection of a Preferred Alternative

Section 1502.14 of the Council on Environmental Quality's Regulations for Implementing the National Environmental Policy Act states that the Final EIS should identify the lead agency's preferred alternative unless another law prohibits expression of such a preference. The Final EIS does not identify the Corps' preferred alternative, and EPA is unaware of any other law that prohibits its disclosure. The absence of such information eliminates the opportunity for EPA, the public, and other stakeholders to comment on the selection of the preferred alternative.

Recommendation:

For future Final EISs on other projects, please clearly identify the Corps' preferred alternative, or explain why it is not identified.

Inclusion of 404(b)(1) Information in the EIS

The practice of deferring, until the conclusion of the NEPA process, the disclosure of information needed to evaluate compliance with the Clean Water Act section 404(b)(1) Guidelines makes it difficult for agencies and the public to provide timely and substantive input on the evaluation of alternatives. Page 29 of the Corps South Pacific Division February 8, 2013 Regulatory Program Standard Operating Procedure for Preparing and Coordinating EISs (12509-SPD) states:

Districts will make all reasonable efforts to ensure the NEPA alternatives analysis is thorough and robust enough to provide the information needed for the evaluation of alternatives under the section 404(b)(1) Guidelines ("Guidelines") and the public interest review. The goal of integrating the NEPA alternatives analysis and the section 404(b)(1) alternatives analysis is to gain efficiencies, facilitate agency decision-making and avoid unnecessary duplication.

The discussion of alternatives in the Final EIS does not provide the information needed for the evaluation of alternatives under Section 404(b)(1), nor does it provide any information to suggest that the Applicant's Proposed Alternative could potentially be the LEDPA. The Applicant's Alternatives Analysis, which the Corps provided to EPA in a separate submittal, also did not provide this required information. EPA, therefore, is still unable to fully evaluate whether the Proposed Action may be the LEDPA, or whether it complies with the other restrictions on discharge under the Guidelines.

Recommendation:

For future EISs on other projects, we strongly recommend that the Corps make information on compliance with the Guidelines available to EPA, the public, and other stakeholders through the EIS process. Additional information should include: (1) an avoidance and minimization analysis, and (2) a description of how costs, logistics and technical feasibility were used to eliminate alternatives with lesser impacts to wetlands.

Thank you for adding information to the Final EIS to address our Draft EIS comments related to mitigation, stormwater, air quality, smart growth, and transit. We appreciate the opportunity to review this Final EIS, and are available to discuss our comments. If you have any questions related to waters of the U.S. or the 404(b)(1) Guidelines, please contact Leana Rosetti at (415) 972-3070 or rosetti.leana@epa.gov. For other issues, please contact Jen Blonn at 415-972-3855 or blonn.jennifer@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa B. Hanf". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Lisa B. Hanf, Assistant Director
Enforcement Division

Cc via email:

Mike McKeever, Sacramento Area Council of Governments