



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

FEB 25 2014

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

Subject: Public Notice (PN) SPK-2004-00814, Murphy Glen Estates Project, Sacramento County, CA

Dear Colonel Farrell:

Thank you for the opportunity to comment on the subject PN dated February 11, 2014. The proposed project would result in the discharge of fill material into 4.633 acres of waters of the U.S. for mixed density residential development project. Based on the available information, the EPA concludes that the applicant has not demonstrated compliance with the restrictions on discharges per the Federal Guidelines (Guidelines) promulgated under section 404(b)(1) of the Clean Water Act (CWA) at 40 CFR Part 230. Specifically, the applicant has not: 1) submitted an Alternatives Analysis demonstrating that the proposed project is the least environmentally damaging practicable alternative (LEDPA); 2) justified no avoidance or minimization of impacts; or 3) demonstrated compliance with the Compensatory Mitigation Rule of 2008.

The applicant's project purpose is to construct the residential development project on a 40.6-acre site located east of Bradshaw Road, north of Oxform Lane, south of Florin Road, in Sacramento County, California. The project proposes to eliminate 2.146 acres of vernal pools, 1.328 acres of seasonal wetlands, 1.072 acres of seasonal wetland swales, and 0.087 acre of ditches for 3.7 acres of low-density, single-family residential units, 8.1 acres of multi-family residential units, and 0.2 acre of streets and landscaped areas. There is a large swale that crosses the property and, as indicated above, 2.146 acres of vernal pools, which, from aerial images, appear to be in reasonably good condition.

Pursuant to the Guidelines, mitigation of project impacts begins with the avoidance and minimization of direct, indirect, and cumulative impacts to the aquatic ecosystem, followed by compensatory measures if a loss of aquatic functions and/or acreage is unavoidable. Compensatory mitigation is, therefore, intended only for unavoidable impacts to waters after the LEDPA has been determined. Given the fact that there is no demonstration that the project is the LEDPA, any discussion of compensation for direct and indirect impacts is premature. EPA is also concerned about potential impacts to the swale, both upstream and downstream, by affecting the hydrology of the swale itself and any adjacent vernal pools.

We recommend that the applicant submit additional information on the following issues:

- Analysis of off-site alternatives that include areas within Sacramento County and beyond that can meet the basic project purpose;
- Analysis of on-site alternatives that show avoidance and minimization of impacts to aquatic resources;
- Once all impact avoidance and minimization measures have been demonstrated, provide a compensatory mitigation plan for each aquatic resource type in a watershed context as required by all elements of the 2008 Mitigation Rule.

Finally, the proposed project site is within the South Sacramento County Habitat Conservation Plan (SSHCP) planning area. Should the applicant be unable to demonstrate compliance with the Guidelines for the proposed project, we recommend the applicant consider the possibility of dedicating this site as a conservation area for the SSHCP.

Thank you for the opportunity to provide comments on this project, your ongoing partnership in the SSHCP and implementation of CWA programs. As additional information becomes available on the above concerns, please contact Paul Jones of my staff at (415) 972-3470, or jones.paul@epa.gov.

Sincerely,



Jason Brush
Supervisor
Wetlands Office

Cc:

Jennifer Norris, Field Supervisor, US Fish and Wildlife Service, Sacramento Field Office