



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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

MAR 23 2015

Subject: Public Notice (PN) SPK-2014-00131, Liberty Ranch Project, Galt, Sacramento County, CA

Dear Colonel Farrell:

Thank you for the opportunity to comment on the subject PN dated January 30, 2015. The applicant proposes to construct a 351.5-acre mixed-use, primarily residential development that would result in permanent impacts to approximately 7.5601 acres, including wetlands. 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 (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.

Pursuant to the Guidelines, if discharge is proposed for a special aquatic site (such as wetlands) and does not have a water-dependent project purpose, practicable alternatives are presumed to exist unless clearly demonstrated otherwise. To date, an AA, which is required by the Guidelines, has not been provided by the applicant. An AA must consider off-site alternatives that eliminate or reduce impacts to waters of the United States. If no less damaging practicable sites exist, the AA should include a comprehensive evaluation of practicable avoidance configurations on-site to eliminate or reduce direct, indirect, and cumulative impacts to the extent practicable, especially special aquatic sites. Unavoidable direct and indirect impacts, including temporal losses, must be mitigated in compliance with the standards of the 2008 mitigation rule.

According to the PN, the applicant proposes to fill all waters on-site, and then re-construct a portion of Deadman Gulch. It remains to be demonstrated that the avoidance of the wetlands and channels to be permanently filled (and not reconstructed) is impracticable, or that indirect impacts to the reconstructed Deadman Gulch have been minimized. For example, the applicant should analyze measures such as expanding buffers, road spanning of waters, minimizing impacts from the trail system, and avoiding the additional wetlands and channels.

The applicant proposes to redesign Deadman Gulch, mainly for the purpose of increasing its capacity to contain flood flows. EPA appreciates the applicants' efforts to maintain the drainage in an open space preserve, however, an appropriate wetland buffer is needed to maintain ecosystem integrity. A buffer protects and enhances the quality and health of wetland and in-stream physical, chemical, and biological

characteristics, which enables the wetland or stream to provide important services, such as sequestering carbon, metabolizing organic matter, and degrading and processing pollutants. Well-designed buffers remove sediments and associated pollutants from surface water runoff, influence the temperature and microclimate of a water body, and provide organic matter to the stream or wetland. Buffers in urban areas are particularly important in helping to moderate the impacts of altered hydrology and flooding.

A 2014 study by the Journal of the American Water Resources Association reviews the important role buffers play with regard to ecosystem function (*e.g.*, nitrate removal, sediment trapping, channel maintenance, temperature stability; and support for macro-invertebrates and fish assemblages).ⁱ Based on their review of the literature, the authors concluded that buffers 100-feet wide or greater are needed to protect water quality, habitat, and biotic features associated with fifth order or smaller streams (p. 576).

The current channels are surrounded by agricultural land, which while not an ideal buffer in regards to chemical inputs such as pesticides, provides certain functions that an urban area does not, such as habitat, access to a large floodplain, infiltration, and groundwater recharge. The proposed reconstruction of Deadman Gulch would be surrounded by urban development and provide only 50 foot buffers, with trails, a school, community centers, and water detention basins immediately outside of this buffer, 2 culverted road crossings (as opposed to one existing currently), and one pedestrian bridge crossing. Trails and roads may facilitate, and even encourage, disturbances within the proposed preserve such as glare, noise, trash, illegal dumping, introduction of non-native plants and animals, trespassing, and off-road vehicle intrusion. These disturbances underscore the need for a larger buffer that can serve to minimize indirect impacts. In addition, the reconstructed channel will drain the entire proposed urban development. While the detention basins and new channel design will provide some water treatment and attenuation of flood flows, the proposed preserve lacks the buffers necessary to maintain the functions of the on-site waters and should be expected to degrade water quality.

The reconstruction of Deadman Gulch has been proposed by the applicant to serve as compensatory mitigation for all of the on-site impacts. Given additional avoidance and/or minimization of direct, indirect, and cumulative impacts may be necessary and practicable, a detailed discussion of compensatory mitigation actions in this comment letter would be premature. However, EPA suggests the applicant consider the elements below in formulating a mitigation plan; these issues will need to be resolved consistent with the 2008 Final Compensatory Mitigation Rule (Rule)ⁱⁱ prior to permit approval:

- Any maintenance that will be performed such as vegetation and sediment removal must be specified and written into the permit, and taken into account when determining the mitigation ratio if mitigation credits are to be awarded.
- Any mitigation strategy must result in high quality aquatic resources that maintain their functional integrity over the long-term, and adhere to performance standards determined by the Corps. As stated in the preamble of the mitigation rule, "...all compensatory mitigation projects should provide a high level of functional capacity, even when compensating for degraded or low quality resources. Replacement ratios may be used to adjust for the relative quality of impact sites and mitigation projects, where appropriate."ⁱⁱⁱ The current open-space proposal, which contains only 50-foot buffers, a heavy trail system, road crossings, and periodic sediment and vegetation removal by the City of Galt, while it may enhance certain functions, will result in degradation of others, and will not provide a high level of functional capacity. This must be considered when determining whether the site is appropriate for mitigation. If mitigation credit is to be awarded, these factors must also be considered when applying the Corps' South Pacific

Division's Standard Operating Procedure for determining mitigation ratios, and the information provided to date suggests that the mitigation ratio should be higher than 1:1.

Thank you for the opportunity to provide comments on this project. We look forward to working with the Corps and the applicant to resolve the important environmental issues concerning the proposed project. As additional information becomes available on the above concerns, please contact Leana Rosetti of my staff at (415) 972-3070, or rosetti.leana@epa.gov.

Sincerely,



Jason Brush
Supervisor
Wetlands Office

Cc:
Ramon Aberasturi, Corps of Engineers Sacramento Office
Applicant

ⁱ Sweeney, B.W. and J.D. Newbold. June 2014. *Streamside Forest Buffer Width Needed To Protect Stream Water Quality, Habitat And Organisms: A Literature Review*. Journal of the American Water Resources Association. pp. 560-574.

ⁱⁱ http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx

ⁱⁱⁱ 40 CFR part 230, p. 19601