



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

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Colonel Michael J. Farrell  
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U.S. Army Corps of Engineers  
1325 J. Street, Room 1350  
Sacramento, California 95814

DEC 1 2014

Subject: Sierra Vista Specific Plan (PN 200601050), Placer County, California

Dear Colonel Farrell:

Thank you for your continued coordination regarding the proposed fill of 24.81 acres of wetlands and other waters of the United States (waters) for the Sierra Vista Specific Plan, located in the City of Roseville, Placer County, California. On November 14, 2014, we met with your staff, landowners and their legal representatives, and the City of Roseville to discuss ongoing environmental concerns with the proposal, which have most recently been addressed in our letter dated September 16, 2014 (attached).<sup>1</sup> We received meeting notes from the applicants' legal consultants on November 19, 2014. As discussed at the meeting, we remain concerned that the applicant's Alternatives Analysis, including the project purpose statement, screening criteria, and identification of the least environmentally damaging practicable alternative (LEDPA), are fundamentally flawed. The inadequacy of the proposed compensatory mitigation also remains of substantial concern.

### Project Purpose and Screening Criteria

As discussed and acknowledged at our meeting, the Corps is solely responsible for defining the overall project purpose that drives a CWA 404(b)(1) alternatives analysis.<sup>2</sup> The Corps Final Environmental Impact Statement for Sierra Vista defined the purpose as: "to implement a large scale, mixed-use, mixed-density master-planned community in Western Placer County." EPA strongly encourages the Corps to use this project purpose statement for the "overall" project purpose statement for the 404(b)(1) analysis as well, and reject the applicants' proposed statement that includes attainment of the Sierra Vista Specific Plan's objectives.<sup>3</sup> There are well-established policy reasons why it is inappropriate in general to include such local planning aims in a 404 project purpose statement, and these reasons

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<sup>1</sup> The letter reiterates EPA positions documented in letters on the project dated April 28, 2008; May 12, 2008; September 4, 2012; and July 8, 2013 (also attached), but was primarily focused on the July 23, 2014 *Sierra Vista Revised Conceptual Onsite Wetland Creation Plan* (a revision of the previously submitted Sierra Vista Conceptual Mitigation Plan dated February, 2011), and the *Alternatives Analysis for the Sierra Vista Specific Plan* dated November 5, 2012.

<sup>2</sup> The Corps of Engineers Regulatory Program Standard Operating Procedures (SOP) of July 1, 2009, at 15; <http://www.spd.usace.army.mil/Portals/13/docs/regulatory/qmsref/eis/Regulatory%20SOP%20July%202009.pdf>.

<sup>3</sup> See the above referenced letter for detailed comments regarding this issue.

continue to apply here.<sup>4</sup> But the primary reason to reject such an approach for Sierra Vista is that failing to do so frustrates the Corps ability to exercise the most fundamental determination of the Guidelines at this site—whether avoidance of specific waters at Sierra Vista is practicable.

EPA has consistently communicated this position to the Corps and applicants through many meetings and correspondence. Throughout EPA’s participation in the City of Roseville’s 2007-2009 consultation meetings (per the August 2000 MOU between the City and the US Fish and Wildlife Service), and as shown in the administrative record in all of EPA’s comment letters, EPA has consistently stated that the proposed project has not been demonstrated to be the LEDPA. A letter received from the City of Roseville dated October 9, 2014, provided several attachments which included notes from early consultation meetings and a June 9, 2009 letter from the EPA regarding the process. The EPA letter supports the early consultation process but clearly states that there are outstanding issues concerning Sierra Vista, and that the planning level information “allows us to provide guidance regarding important aquatic resources to avoid but may not allow us to determine all of the aquatic resources that must be avoided for compliance with section 404 of the CWA.” In addition, the meeting notes provided by the City of Roseville show that EPA consistently asked for better demonstration of whether more avoidance is practicable whenever the topic was discussed. Although the City has provided their justification for the need to fill certain areas, these justifications are not necessarily equivalent to demonstrating impracticability as required by the Guidelines. Underscoring this point, several sites (e.g., a “signature park”) have changed proposed land uses despite the City’s prior arguments that it was absolutely necessary in its planned location for the project to be practicable.

As a result of this early coordination, an updated (February 2014) Alternatives Analysis was meant to address these concerns, but surprisingly continues to unnecessarily constrain the description of the project for analysis under the Guidelines by marrying the project purpose described in the EIS to meeting the *specific* objectives of the City’s *Specific Plan*: “The ‘overall project purpose’ is the development of a large-scale, mixed use, mixed-density master-planned community in western Placer County *that achieves the Basic Objectives of the Specific Plan*” (2014 Alternatives Analysis, p. 12 emphasis added). The primary difference between this statement and the version from 2012 is that a subsequent description of these “basic objectives” has been removed. But this does not change the meaning of the statement, or its effect of eliminating any alternative in the applicant’s analysis except the one the applicant proposes. The Corps should find this fact suspect, and consider that the inclusion of the “specific plan objectives” may have actually prevented the applicant from identifying the only permissible alternative—the LEDPA.

In its decision document, the Corps should conduct a revised alternatives analysis for Sierra Vista based on deletion of reference to the “Basic Objectives of the Specific Plan” in the overall project purpose. When an applicant’s overall project purpose contains an unnecessarily constrained description of the

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<sup>4</sup> *Id.* (Rejecting the applicant’s overall project purpose description: “to provide a regional shopping mall with support commercial facilities to serve the western El Dorado County-Highway 50 corridor market area.”); see also Hartz Mountain Permit Elevation, HQUSACE Review Findings, available at <http://www.epa.gov/owow/wetlands/pdf/HartzMountainGuidance.pdf> (rejecting applicant’s project purpose statement proposing “to construct a 3,301 unit residential housing development in the IR-2 area,” where “IR-2” referred to “an area designated by the Hackensack Meadowlands Development Commission master plan as ‘Island Residential.’”)

project for analysis under the Guidelines, the Corps can (and Sacramento District has<sup>5</sup>) substituted its own more generalized overall project purpose description. Similarly, in the *Hartz Mountain* matter, Corps Headquarters rejected the applicant's attempt to constrain the alternatives analysis by the low-income housing requirements mandated by local zoning.<sup>6</sup> For the same reasons, the Sacramento District should prevent Sierra Vista from constraining the alternatives analysis by, for example, the Regional Housing Needs Allocation (6,650 homes) that is a "Basic Objective" of the City's Specific Plan (which is similar to a zoning ordinance).<sup>7</sup> Although no single factor is presented in the 2014 Alternatives Analysis as determinative, all other alternatives are eliminated because they do not meet these factors.

Specifically in the case of Sierra Vista, the inclusion of these general local planning objectives leads to screening criteria for alternatives that do not speak to the applicable regulatory standards—whether further avoidance of aquatic features is practicable as a matter of costs, logistics or existing technology. Although the 2014 Alternatives Analysis modified the screening criteria by removing some of the strict thresholds set for developable acreage and "cost per developable acre," all of the screening criteria themselves remain, including achieving all the objectives of the specific plan. We also note that the applicant's "cost-per-developable-acre" criterion serves only to show that some alternatives may be more expensive than the applicant's proposed project, not (as is required by the Guidelines) whether the cost of avoiding additional wetland fill is impracticable. Indeed, the Sacramento District has in the past found that net operating income, the perceived need for sufficient sales tax funding, and rate-of-return, are not appropriate screening criteria for determining compliance with the Guidelines.<sup>8</sup>

Finally, the screening criterion that requires "the reasonable development" of each individual property is conceptually at odds with planning at a regional level, and in any event is not specific enough to be useful in assessing practicable avoidance at the plan scale. The implicit presumption that each individual property under the plan is necessarily entitled to develop in waters is not valid. From the standpoint of the CWA, one primary benefit of grouping applicants under a regional planning effort is to maximize both development and conservation efficiencies over a larger landscape. By definition, this means some parcels will be developed more than others for the benefit of the entire plan. Any individual inequities that may arise from that fact should be dealt with among the plan partners, rather than expecting the CWA 404(b)(1) process to do so. Similar vague screening criteria, such as "fiscal sustainability" for the City of Roseville, Blueprint Consistency/Smart Growth, and cost per developable acre, while potentially useful or even laudable planning goals, obfuscate the factors that must be considered for the particular decision before the Corps—CWA compliance.<sup>9</sup>

With regard to the current state of conceptual compensatory mitigation, EPA agrees with the Corps that substantial work remains to be done. The Conceptual Mitigation Proposal would not adequately mitigate for the seasonal depressional wetlands and wetland swales, as it proposes to create out-of-kind riparian and emergent marsh wetlands along Curry Creek to compensate for some of these losses. These

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<sup>5</sup> See Corps Administrative Appeal Decision, Roebbelen Land Company, Sundance Plaza Project Permit Denial, File No. 199800257, Sacramento District, February 5, 2001 at 3.

<sup>6</sup> *Hartz Mountain* at 6.

<sup>7</sup> "The adoption of a specific plan is a legislative act similar to adoption of a general plan or zoning ordinance." State of California, Governor's Office of Planning and Research, [http://ceres.ca.gov/planning/specific/part1.html#part1\\_anchor](http://ceres.ca.gov/planning/specific/part1.html#part1_anchor)

<sup>8</sup> See Corps Administrative Appeal Decision, Roebbelen Land Company, Sundance Plaza Project Permit Denial, File No. 199800257, Sacramento District, February 5, 2001 at 5 and 7.

<sup>9</sup> See EPA's September 16, 2014 comment letter for detailed comments regarding these criteria.



created wetlands also lack appropriate buffers. As the Corps has stated, if this wetland creation is to be used as mitigation, the Corps Standard Operating Procedure for calculating mitigation ratios will likely result in the need for additional mitigation.<sup>10</sup>

## **Conclusion and Recommendations**

The Sierra Vista project continues to lack appropriate analysis and documentation for a defensible Record of Decision, and the proposed impacts remain subject to potential EPA and Corps Headquarters' review.<sup>11</sup> Neither the Specific Plan, nor individual permits under the plan, should be permitted as proposed. Prior to concluding their Record of Decision, EPA recommends that the Corps (1) re-analyze the practicability of on-site avoidance based on more limited and appropriate statement of project purposes consistent with established Corps guidance, and (2) after clearly maximizing plan-level impact avoidance, provide clear guidance to the applicant on appropriate compensatory mitigation necessary to offset unavoidable impacts. Key considerations include:

- Whether mitigation of project impacts has been properly sequenced. Mitigation 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. Only once the LEDPA has been determined should a detailed mitigation plan be considered.
- Whether resources in the northwest corner of the site (Conley property, northwest portion of Federico property) and on the Baybrook property can be practicably included in the open space preserve. These areas have the highest density of suitable habitat for listed shrimp species relative to the other areas that could be avoided, and are adjacent to areas already designated as open space in the proposed alternative. The Corps should request information from the applicant on the specific costs of this avoidance to consider in their findings.
- Whether proposed fill for creek crossings can be practicably spanned. The three most westerly crossings on Federico Creek impact several vernal pools and seasonal wetlands as proposed. Spanning them would achieve greater avoidance while maintaining the development design. Spanning the two crossings on the eastern portion of Curry creek should be explored for the same reasons.
- Whether adequate buffers (minimum 100 feet from edge of outer most aquatic resource boundary) to avoid indirect impacts to aquatic resources have been proposed in all avoided areas. The trail system should be outside of the buffer where possible; if the trail lies within the buffer, it should be kept at the outer edge, and must minimize impacts with features such as a non-paved surface (such as broken shell or decomposed granite), a post and cable fence, and directional lighting.
- Whether proposed riparian wetland creation along Curry Creek is an appropriate compensatory mitigation strategy for the seasonal depression wetlands and swales the project would

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<sup>10</sup>See The Army Corps of Engineers Memorandum regarding Sierra Vista's Mitigation Ratios dated August 8, 2014.

<sup>11</sup> EPA identified the permit action in 2008 as a candidate for review by our respective Headquarters pursuant to our 1992 Memorandum of Agreement regarding CWA Section 404(q). Both vernal pools and the interconnected aquatic resources are identified as Aquatic Resources of National Importance, and practicable avoidance of these resources must be demonstrated before mitigation is considered. The 2012 and 2013 EPA comment letters to the Draft Environmental Impact Statement and Final Environmental Impact Statement, respectively, reiterate these concerns, as well as the inadequacy of the proposed conceptual mitigation plan. These concerns remain unaddressed in the updated February 2014 Alternatives Analysis and revised mitigation plan.

eliminate. The purpose of these created wetlands is to attenuate peak storm flows from the surrounding development. To potentially be compensatory for some of the lost functions of the seasonal wetlands impacted, they would need to adhere to performance standards that include periods of inundation, a list of dominant plant species, and required depth ranges that are consistent with the seasonal wetland and wetland swales they are replacing. In addition, they would need to have a 100 foot buffer, which they currently lack. Options for appropriate mitigation include permittee-responsible, off-site in-kind wetland creation, or in-kind credits purchased from a mitigation bank in the watershed.

EPA looks forward to continuing our discussion and working to resolve these important issues. Please ensure your staff maintain their excellent coordination with EPA regarding meetings and materials that are developed for this important project. Our point of contact is Leana Rosetti who may be reached at (415) 972-3070, or [rosetti.leana@epa.gov](mailto:rosetti.leana@epa.gov).

Sincerely,



Jason Brush  
Supervisor  
Wetlands Section

cc:

Kathy Norton, USACE, Regulatory Division

Kellie Berry, US Fish and Wildlife Service, Sacramento Valley Office

Attachments:

- 1) EPA ARNI letter dated April 28, 2008
- 2) EPA ARNI letter dated May 12, 2008
- 3) EPA DEIS comment letter dated September 4, 2012
- 4) EPA FEIS comment letter dated July 8, 2013
- 5) USACE Memorandum for Record dated August 8, 2014
- 6) EPA comment letter dated September 16, 2014

