



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO
ATTENTION OF:

June 24, 2002

Office of the Chief
Regulatory Branch

Bill Morem, Editor
c/o the San Luis Obispo Tribune
P.O. Box 112
San Luis Obispo, CA 93406

Dear Mr. Morem:

In recent months your paper has run several commentaries about U.S. Army Corps of Engineer actions related to the construction of the new Home Depot on Los Osos Road. As the officer responsible for the Corps of Engineers activities in this area I would like to offer some information that has not been presented in your publication.

In 1972 Congress enacted the Clean Water Act. This law established a federal interest in the waters of the United States and required the U.S. Army Corps of Engineers to review all actions that affect wetlands. The value of wetland ecosystems is well established and each Administration for the last decade has directed the Army to ensure that there is no net loss of wetlands in the nation. The Army's regulatory permitting program seeks to balance the federal government's interest in preserving the environment with the property owners' interest in the reasonable use of their property.

In reviewing a developer's permit application, the Army is required to fully consider the impacts that the proposed project will have on the environment. Projects that have substantial impacts undergo a rigorous review process including a public notice, consultation with other agencies, considerations of endangered species, and input from concerned members of the public. This can be a lengthy process. A simplified process has been established to authorize projects that have minimal impacts to wetlands. When the Home Depot application was submitted, projects with less than 3 acres of wetland impacts would generally qualify for the simplified process.

In February 1999 the developer of the Home Depot project approached the Army for permission to develop a site containing wetlands subject to federal jurisdiction. The review of the permit application determined that the project would destroy more than the 3 acres of wetlands allowed under the simplified process. After consulting with the Army, the developer revised the project to reduce the area of wetland impacts and qualify it for the simplified review process. The Army completed review of the permit application and issued a permit for this activity in June 1999.

As construction of the project progressed, local residents became concerned that the project had exceeded the conditions of its permit. At their request, Army biologists visited the site and confirmed that the developer had impacted more wetlands than were authorized under its permit and that other permit conditions had been violated. That permit was revoked. The developer filed suit against the Army in August of 2001 and in September the court acted upon the case.

Although the court determined that the manner in which the Army revoked the permit was incorrect, the court did not prevent the Army from carrying out its statutory duty to enforce permit violations under the Clean Water Act. Since January 2002, the Justice Department (representing the government) and the developer have been negotiating in good faith to reach an agreement on appropriate mitigation for damage to wetlands, and penalties for violations of the law. I am happy to report that on June 24, 2002 the Justice Department filed a proposed consent decree (agreement) between the developer and the Government that resolves all claims between the parties and allows the developer to submit a new permit application to widen Los Osos Valley Road.

A recent commentary in your paper alleged that the government was not acting in good faith in conducting the negotiations. The information that you reported was factually incorrect. A more detailed discussion of the Army's actions related to this permit, as well as other related topics is available at our Regulatory Program website: www.spl.usace.army.mil/regulatory.

Sincerely,

Richard G. Thompson
Colonel, Corps of Engineers
District Engineer