

United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513

In Reply Refer To:
AESO/FA
22410-2006-FA-0033

July 21, 2006

E-Mail Transmission

Ms. Cindy Lester
Chief, Regulatory Branch
U.S. Army Corps of Engineers
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012-1936

Dear Ms. Lester:

Thank you for Public Notice 2000-00440-SDM (PN) dated June 22, 2006, issued by the U.S. Army Corps of Engineers. D.R. Horton Inc.-Dietz Crane has applied for a Section 404 Clean Water Act (CWA) permit to construct the proposed 160-acre Gila Buttes residential development in Casa Grande, Pinal County, Arizona (Sections 30, T5S, R6E). These comments are provided under the authority of, and in accordance with, the Fish and Wildlife Coordination Act (48 Stat. 401, as amended U.S.C. 661 et. seq.) (FWCA), but do not constitute our final review of the permit application under the FWCA.

The proposed project would directly impact 3.84 acres of jurisdictional washes through the discharge of dredged and fill material for the construction of the Gila Buttes project. The PN indicates the proposed project would include residential homes, retention basin, flood control channels, and a school. The proposed project site is characterized by Sonoran desert scrub vegetation such as creosote (*Larrea tridentate*), palo verde (*Parkinsonia* sp.), ironwood (*Olneya tesota*), mesquite (*Prosopis* sp.), bursage (*Ambrosia* sp.).

Your review should address the entire 160-acre footprint of the proposed development, including direct, indirect, and cumulative effects, and all interrelated and interdependent activities, including those above the ordinary high water mark. Your assessment should capture the effects of adjacent upland development on jurisdictional waters not subject to a discharge and the effects of the larger project on a landscape scale. An evaluation should be conducted to determine the extent of secondary and cumulative effects as defined in the Section 404(b)(1) Guidelines (CFR 40 part 230.11).

The Section 404(b)(1) Guidelines require the analysis of the effects of Section 404 permitted activities on "surrounding areas" as well as "other wildlife," including resident and transient mammals, birds, reptiles, and amphibians (40 CFR Part 230.32). Corps regulations (CFR 33, Appendix B to Part 325) grant the District Engineer authority over portions of the project beyond

the limits of jurisdiction where the environmental consequences of the larger project are essentially products of the Corps permit action, such as when it is impracticable to completely avoid jurisdictional waters through bridge spanning or upland buffering. This would be consistent with the approach taken by your agency in the expanded environmental assessment for the Lone Mountain project (2000-01928-RWF), where the scope of impact analysis was extended over the entire residential development.

The PN states a preliminary determination has been made that an environmental impact statement (EIS) is not required for the proposed work in accordance with the National Environmental Policy Act (NEPA). We believe your review should address the potential effects of the entire development on all jurisdictional washes, desertscrub vegetation, and local and regional wildlife resources, including potential shifts in ecosystem function, community structure, biological diversity, relative abundance, and species richness. This approach would be consistent with the Regulations For Implementing The Procedural Provisions Of The NEPA (40 CFR, Parts 1502.16 and 1508.8), prepared by the Council on Environmental Quality, which states the environmental consequences of an action include both direct effects and “indirect effects which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” We request any draft NEPA document be submitted to our office so we may evaluate the environmental impact and complete our mandated review of the proposed project.

The PN does not provide information regarding the preparation or implementation of a mitigation plan. The Corps’ recent Special Public Notice (970031200-RRS) for Mitigation Guidelines and Monitoring Requirements regarding compensatory mitigation site design (page 14), states “[t]he factors used in a preliminary design of the compensatory mitigation site should have a functional assessment basis.” Your functional assessment should use objective empirical methods to quantify impacts on biotic resources for the purpose of guiding preparation of a mitigation plan.

The functional assessment should address vegetative parameters such as canopy cover, biomass, and total volume, and perhaps shifts in animal diversity, abundance, density, and richness. Monitoring and criteria should track the success of mitigation. Empirical criteria are needed to illustrate how the mitigation proposal would quantitatively replace the biological functions of ecosystems and biotic communities affected by the project. The mitigation plan should demonstrate that mitigation would adequately replace the loss and/or impairment of biological functions. Of particular concern is how jurisdictional waters would function within an urban landscape versus how they function in a natural setting. We suggest biological functions provided by the totality of jurisdictional waters on the project site, including the role and influence of adjacent uplands, be evaluated in a quantitative fashion. We request the draft mitigation plan be submitted to our office so we may review the plan, provide recommendations, and complete our mandated review of the proposed permitting action.

We believe it would be within your authority to require mitigation that addresses the totality of project-related impacts, both above and below the ordinary mark, as they relate to the biological function of jurisdictional waters. The Corps recently acknowledged its authority over uplands in the March 28, 2006, Proposed Rule for Compensatory Mitigation for Losses of Aquatic Resources (71 FR 15520-15556), where it states on page 15527 "...the district engineer may grant compensatory mitigation credit for upland areas within a compensatory mitigation project, if those uplands increase the overall ecological functioning of the compensatory mitigation site or other aquatic resources in the watershed or ecoregion." The Corps also recognized this authority in the August 9, 2001, Proposal to Reissue and Modify Nationwide Permits (66 FR 42070-42100), where it states on page 42071 "The Corps statutory authority to require vegetated buffers next to streams and other open waters originates in the goal of the CWA which is to restore and maintain the chemical, physical and biological integrity of Nation's waters."

In closing, we request the permit application be held in abeyance until we have had an opportunity to review the draft NEPA document and mitigation plan, and provide substantive comments and recommendations in accordance with the FWCA and Section 404(m) of the CWA. Thank you for your coordination on this project. If we can be of further assistance please contact Mike Martinez (x224) or Debra Bills (x239).

Sincerely,

/s/ Steven L Spangle
Field Supervisor

cc: Regional Administrator, Environmental Protection Agency, San Francisco, CA
Supervisor, Project Evaluation Program, Arizona Game and Fish Department, Phoenix, AZ