

**United States Department of the Interior  
U.S. Fish and Wildlife Service  
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AESO/FA  
22410-2006-FA-0034

July 25, 2006

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:

The Service has received Public Notice 2005-00230-MB (PN) dated June 28, 2006, issued by the U.S. Army Corps of Engineers. CPE Development Company, LLC has submitted an application for a Section 404 Clean Water Act (CWA) permit to build the 104-acre Willow Ridge residential and commercial development in Marana, Pima County, Arizona (Section 25, T12S, R12E). 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 be located in the northwest Tucson metropolitan area (Marana, Oro Valley, Avra Valley, Tucson, and unincorporated areas of Pima County), north of Ina Road, east of the Tucson Mountains, and west of the Catalina Mountains. Xeroriparian habitat traversing the site includes species such as mesquite (*Prosopis* sp.), foothill palo verde (*Cercidium microphyllum*), whitethorn acacia (*Acacia constricta*), and ironwood (*Olneya tesota*). Upland vegetation at the site is consistent with the Arizona Upland subdivision of the Sonoran desertscrub biotic community and includes velvet mesquite (*Prosopis velutina*), desert hackberry (*Celtis spinosa*), creosotebush (*Larrea tridentata*), triangle-leaf bursage (*Ambrosia deltoidea*), burroweed (*Isocoma tenuisecta*), foothill palo verde, whitethorn acacia, and ironwood. Several species of cacti are also found within the project area.

The PN indicates the proposed Willow Ridge development would consist of low- to moderate-density single family residential and commercial development. Development activities would disturb approximately 62.8 of the total 104 acres. Included within the 104-acre development proposal are 41.2 acres of open space, 11.8 acres of restored open space, and 0.8 acres of recreational open space. Of a total of 1.6 acres of jurisdictional washes on the project site, 0.648 acres would be directly affected by the discharge of dredged and/or fill material for the construction of road crossings, driveways, pad fills, trails, diversion structures, and utilities integral to the Willow Ridge development plan.

It is Service position that it is proper to assess the total impact of the total development, including any parts to be located on uplands and any secondary effects. The totality of existing and projected cumulative impact of all developments affecting a waterway or group of related waterways and the dependent resources thereof also must be considered (40 FR 55810-55824). We believe the footprint of the permitted project that should be assessed by the Corps is, at minimum, the total 104 acres of development. The PN provides no information regarding the effects of adjacent development on jurisdictional washes not subject to a discharge, nor does it provide information on the effects of the larger project on a landscape scale.

We believe the Corps has the authority and responsibility to consider all indirect effects of the discharge of dredged and fill material. The 404(b)(1) Guidelines direct the Corps to analyze the effects of 404 permitted activities on “surrounding areas” as well as “other wildlife” including resident and transient mammals, birds, reptiles, and amphibians (40 CFR Part 230). Additionally, the Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act (NEPA) (40 CFR, Parts 1502.16 and 1508.8), 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.”

Corps regulations (CFR 33, Appendix B to Part 325) state that the District Engineer is considered to have 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.” If it is impracticable to bridge span all jurisdictional waters on site, thus avoiding impacts to jurisdictional waters, we believe the proposed development could not occur but for the issuance of a Section 404 permit and it would be within Corps authority to extend the scope of analysis beyond the limits of the ordinary high water mark and assess interrelated and interdependent effects. This is also consistent with Corps regulations regarding the public interest review (33 CFR Part 320.4).

We believe this project is functionally similar to Lone Mountain (2000-01928-RWF), for which your agency previously expanded the scope of analysis to the entire project footprint. Thus, your scope of analysis for Willow Ridge should be structured similarly.

The PN states a preliminary determination has been made that an environmental impact statement (EIS) is not required for the proposed work. As such, we assume that your agency is preparing an environmental assessment (EA) in accordance with the National Environmental Policy Act. Although your agency expanded its scope of analysis for Lone Mountain, we found the EA to be quite deficient in respect to quantification of impacts, scope of mitigation, and criteria for compliance monitoring (see comments posted at <http://www.fws.gov/arizonaes/> under Document Library). We therefore request the opportunity to review the draft EA for Willow Ridge so we can evaluate the thoroughness and appropriateness of your environmental impact analysis and complete our mandated review of the proposed project.

Your environmental assessment should address the potential effects of the development on Sonoran desertscrub vegetation communities and local and regional wildlife resources; including potential shifts in community structure, changes in diversity, relative abundance, and species richness, and long-term effects on population demographics and viability. This analysis should be more than a qualitative assessment, and use acceptable empirical methodologies to quantify and evaluate the expected impacts on biotic resources.

Your assessment should determine and demonstrate the extent of secondary and cumulative effects as defined in the Section 404(b)(1) Guidelines (CFR 40 part 230.11). This is particularly important in a regional context considering other 404 permitted or proposed residential activities including Dove Mountain (1999-16558-RJD), Estates at Tortolita Preserve (2003-01174-MB), Camino Verde Estates (2000-01235-MJF), Continental Reserve (1999-15883-RJD), Sky Ranch (2000-01878-MB), Hartman Vistas (1999-15457), Camino Verde Estates (2000-01235-MJF), and Cascada (2006-00459-MB) to name a few.

The PN states the applicant will submit a Habitat Mitigation Plan that proposes in-lieu-fee mitigation at a ratio of 3:1. In accordance with existing regulations and procedures, mitigation measures should be developed that first address the issues of avoidance and minimization, and lastly compensation. The Corps' recent Special Public Notice (970031200-RRS) for Mitigation Guidelines and Monitoring Requirements, in regard to 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." For compensatory mitigation, measures should not only mitigate vegetative parameters such as canopy cover, biomass, and total volume; but should also mitigate changes or loss of animal diversity, abundance, density, and richness. Monitoring provisions and criteria should be developed to track the success of mitigation for animal populations as well as vegetation communities. We do not believe providing open space habitat islands within what will essentially be an urban landscape, can adequately mitigate the expected detrimental affects on regional wildlife communities and the loss of habitat contiguity.

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. The Corps recently acknowledged it's 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." We request the draft mitigation be provided to our office so that we may evaluate the scope of the plan, review the proposed methodologies, and provide written recommendations in accordance with our mandates.

The 404(q) Memorandum of Agreement Between the Department of the Interior and the Department of the Army provides for cooperation in acquiring and conveying project information needed by either agency to fulfill its permit review responsibilities. At this time we believe we have not been provided adequate project information to allow us to prepare substantive project specific comments. Therefore, the Service requests this permit be held in abeyance and the comment period extended until we have had an opportunity to review the draft EA and mitigation plan, and provide substantive comments and recommendations in accordance with the FWCA and section 404(m) of the CWA. We would also appreciate the opportunity to review the applicant's response to these comments. If we can be of further assistance please contact Mike Martinez (x224) or Debra Bills (x239).

Sincerely,

/s/ Steven L. Spangle  
Field Supervisor

cc: Project Manager, Army Corps of Engineers, Tucson, AZ  
Regional Administrator, Environmental Protection Agency, San Francisco, CA  
Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ  
County Administrator, Pima County, Tucson, AZ  
Executive Director, Coalition for Sonoran Desert Protection, Tucson, AZ  
Executive Director, Tucson Audobon Society, Tucson, AZ  
Assistant Field Supervisor, Fish and Wildlife Service, Tucson, AZ