

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

AESO/FA

March 28, 2003

Ms. Cindy Lester  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers  
3636 North Central Avenue, Suite 760  
Phoenix, Arizona 85012-1936

Dear Ms. Lester:

Thank you for Public Notice 2000-01234-AP (PN) dated February 28, 2003. Rio Verde 160 Limited Partnership has submitted an application for a Section 404 Clean Water Act (CWA) permit to construct a 160-acre residential development known as Rio Mountain Estates near Scottsdale, Maricopa County, Arizona (Section 29; T5N, 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 involves construction of roads, building pads, and other community infrastructure. A total of 0.85 acre of waters of the U.S. would be filled. We believe the total impact of the 160-acre development which would be authorized by your agency should be assessed, including indirect and cumulative effects and interrelated and interdependent activities, particularly those that occur in upland areas above the ordinary high water mark. The PN states that a preliminary determination has been made that an environmental impact statement 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. We request that a copy of the draft EA be submitted to our office to assist in our assessment of the project.

The PN states that the applicant is in the process of preparing a Habitat Mitigation and Monitoring Plan. In accordance with existing regulations and procedures, mitigation measures should be developed that first address avoidance and minimization, and lastly compensation. For compensation, mitigation and monitoring measures should be based on a thorough impact analysis that addresses the totality of unavoidable project-related impacts. The mitigation plan should be developed in coordination with the appropriate resource agencies. We request the mitigation plan be submitted to our office for review prior to finalization and acceptance.

The PN states that the proposed activity would not affect threatened or endangered species. However, we have previously informed your agency, in our review of the Vista Verde and Tonto Verde projects, that we are concerned about potential affects of development in the Rio Verde area on bald eagles (*Haliaeetus leucocephalus*) at Box Bar Ranch. We continue to be concerned that potential effects on bald eagles have not be adequately assessed, particularly an assessment of the additive nature of past actions with the proposed project. We therefore request the opportunity to review your agency's biological assessment (BA) or other documentation that supports your "no effect" determination under section 7 of the Endangered Species Act (ESA).

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, we request that you do not issue this permit until we have had an opportunity to review the EA, mitigation plan, BA, and other pertinent project-related documents, and provide our review in accordance with the FWCA, CWA, and ESA.

If we can be of further assistance please contact Mike Martinez (x224) or Don Metz (x217).

Sincerely,

/s/ Steven L. Spangle  
Field Supervisor

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