

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

January 14, 2004

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:

The Fish and Wildlife Service thanks you for Public Notice 2003-00593-DE (PN) dated December 15, 2003, issued by the U.S. Army Corps of Engineers. Pulte Homes and DR Horton-Dietz Crane have applied for a Section 404 Clean Water Act (CWA) permit to build the Maricopa Groves residential development near Maricopa, Pinal County, Arizona (sections 26 and 27, T4S, R3E). 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 include 1,375 units on 392 acres of land and would in the direct discharge of dredge or fill material into approximately 4.40 acres of Santa Rosa Wash, a jurisdictional water of the U.S. Your review should address the total impact of the development including direct, indirect, and cumulative effects and all interrelated and interdependent activities including those located above the ordinary high water mark. The footprint of the permitted project that should be assessed is, at minimum, the total 392 acres of development. Your assessment should include the effects of adjacent development on jurisdictional waters not subject to a discharge and the effects of the project on a landscape scale. We suggest an assessment 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).

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 impracticable to completely avoid impacts to jurisdictional waters through bridge spans or upland buffers, the development could not occur but for the issuance of a 404 permit and it would be within Corps authority to extend the scope of analysis beyond the ordinary high water mark and assess interrelated and interdependent actions. The 404(b)(1) Guidelines direct the Corps to analyze the effects of permitted activities on "surrounding areas" as well as "other wildlife" including resident and transient mammals, birds, reptiles, and amphibians (40 CFR Part

230.32). Additionally, the Regulations For Implementing The Procedural Provisions Of The National Environmental Policy Act (NEPA) (40 CFR, Parts 1502.16 and 1508.8) state the environmental consequences of an action include both direct 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.”

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 your agency is preparing an environmental assessment (EA) in accordance with the NEPA. The EA should include the effects of the entire development on vegetation communities and local and regional wildlife resources including potential shifts in community structure, and changes in diversity, relative abundance, and species richness. We request the draft EA be submitted to our office so we can evaluate the environmental impact and complete our review of the proposed project.

The PN states that the applicant and co-applicant are currently developing a mitigation proposal to compensate for the loss of 4.40 acres of jurisdictional washes. The plan should address the biological functions provided by washes, including the role and influence of adjacent uplands, in a quantitative fashion. The plan should not only address vegetative parameters such as canopy cover, biomass, and total volume, but also changes or loss of animal diversity, abundance, density, and richness. Monitoring provisions and criteria should track the success of mitigation for animal populations as well as vegetation communities. Empirical methods and criteria are needed to illustrate how the mitigation proposal would quantitatively replace the biological functions lost and/or impaired by the project. We request a draft of the mitigation plan be submitted to our office so that we can evaluate the proposal and provide recommendations.

In closing, we request an opportunity to review the draft EA and revised mitigation plan and provide substantive comments and recommendations in accordance with the FWCA and Section 404(m) of the CWA. 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 Program, Arizona Game and Fish Department, Phoenix, AZ