

**United States Department of the Interior
U.S. Fish and Wildlife Service
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AESO/FA
22410-2006-FA-0038

August 10, 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:

Thank you for Public Notice 2005-01074-RWF (PN) dated July 10, 2006, issued by the U.S. Army Corps of Engineers. E.P. The King L.L.C. has submitted an application for a Section 404 Clean Water Act (CWA) permit to construct the 1,997-acre King Ranch master-planned community in the Town of Goodyear, Maricopa County, Arizona (Sections 2, 3, 9 and 10, T1S, R2W; Sections 35 and 36 T1N, R2W). Comments on the PN were originally due August 9, 2006, but the Corps granted an extension to August 16. 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 PN indicates that the proposed project would directly affect 15.74 acres of jurisdictional waters through the discharge of dredged and fill material for the construction of road crossings, pad fills, and utility crossings integral to the King Ranch development plan. We believe it is proper to assess the total impact of the development, including any parts to be located on uplands and any secondary effects, including those located above the ordinary high water mark. 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. We believe the footprint of the permitted project that should be assessed by your agency is, at minimum, the total 1,997 acres of development, and should include the effects of upland development on jurisdictional washes not subject to a discharge, and the effects of the larger project on a landscape scale.

Our rationale for this approach has been presented to your agency in comments on other 404 Public Notices such as Rocking K Ranch (974-0475-RJD), Lone Mountain (2000-01928-RWF), Whitestone (974-0218-RWF), and Willow Ridge (2005-00230-MB). We believe this project is

functionally similar to Lone Mountain, for which your agency previously expanded the scope of analysis to the entire project footprint. Thus, your scope of analysis for King Ranch should be structured similarly. This would be consistent with Corps regulations involving the public interest review (33 CFR 320.4), regulations for implementing the National Environmental Policy Act (CFR 33, Appendix B to Part 325) (40 CFR, Parts 1502.16 and 1508.8), and the 404(b)(1) Guidelines (CFR 40 Part 230 and 230.11).

The PN states that a preliminary determination has been made that an environmental impact statement (EIS) is not required for the proposed work. We request you re-evaluate this determination in light of comments by the EPA on projects such as Festival Ranch, Elianto, and Mirielle. Due to similarities in the purpose and scope of the Festival Ranch and King Ranch projects, we urge you to reconsider the need for an EIS. Also, we recently provided comments on environmental assessments for both Lone Mountain and Festival Ranch (posted at <http://www.fws.gov/arizonaes/>), and believe those comments would be very useful in guiding the preparation of your NEPA document. We request the opportunity to review the draft NEPA document for King Ranch so we may evaluate your environmental impact analysis and complete our review of the proposed project.

We believe your analysis for King Ranch 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 and long-term effects on population demographics and viability. This analysis should use standardized empirical methodologies to quantify and evaluate impacts on biological function, such as measures of vegetative structure, volume, cover, biomass, density, diversity, etc.; and wildlife species richness, evenness, relative abundance, diversity, etc. These methods should be derived from standard texts, such as Bookhout (1996) and other relevant literature, and developed in coordination with all appropriate Federal, State, and local agencies and stakeholders.

The PN provides no information regarding preparation of mitigation and monitoring plan. In accordance with existing regulations and procedures, mitigation measures should be developed that first address the issues of avoidance and minimization, then compensation. Compensatory mitigation should have a functional basis and mitigate both vegetative and animal parameters. 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 preserving small isolated habitat islands within an urban landscape can adequately mitigate the expected detrimental affects on regional wildlife communities and the loss of habitat contiguity. In general, the principles of landscape ecology support the notion that landscape islands less than 250 acres in size are not large enough to protect ecosystem integrity and function (Barnes and Adams 1999). Larger reserves are preferred by conservationists because they contain a wider range of conditions to support more species, particularly those requiring large home ranges (Hunter 1996). 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. We request that the draft mitigation and monitoring plan be provided to our office so that we may evaluate the scope of the plan, review the proposed methodologies, provide written recommendations, and complete our review.

We request 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 additional comments and recommendations in accordance with the FWCA and section 404(m) of the CWA. We would also appreciate the opportunity to review any response to our comments prepared by the applicant. We also encourage you to coordinate the review of this project with the Arizona Game and Fish Department. 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
Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ

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Literature Cited

Barnes, T.G. and L. Adams. 1999. A guide to urban habitat conservation planning. Cooperative Extension Service. University of Kentucky, College of Agriculture. 8 pp.

Bookhout, T.A., Editor. 1996. Research and management techniques for wildlife and habitats. Fifth ed., rev. The Wildlife Society, Bethesda, Md. 740 pp.

Hunter, M.L. 1996. Fundamentals of Conservation Biology. Blackwell Science. 482 p.