UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

DEC 04 2017

Colonel Kirk Gibbs
District Engineer, Los Angeles District
U.S. Army Corps of Engineers
Attention: Kathleen Tucker
Regulatory Division
3636 N. Central Avenue, Suite 900
Phoenix, AZ 85012-1939

Subject: Public Notice (PN) SPL-2003-00826-KAT for Phase 1 Villages at Vigneto, Benson, Cochise County, Arizona

Dear Colonel Gibbs:

Thank you for the opportunity to comment regarding the Corps' re-evaluation of the §404 CWA permit that was issued for the project formerly known as Whetstone Ranch on June 21, 2006. EPA recommends that during permit re-evaluation the Corps' assess the potential impacts of the 12,399-acre proposed master planned community as described in the *Villages at Vigneto Final Community Master Plan and Development (2016 Master Plan)*. In addition, we recommend that the mitigation plan be updated to comply with the 2008 Corps/EPA Mitigation Rule (40 CFR 230 Subpart J) and Corps South Pacific Division (SPD) Mitigation Guidelines.

The 2006 permit was issued for an 8,212-acre master planned community that would result in the permanent fill of 51 acres of waters of the United States. This project has remained unbuilt and on July 18, 2016, the City of Benson approved the *Villages at Vigneto Final Community Master Plan and Development (2016 Master Plan)* that includes the 8,212-acres and an additional 4,187 acres. EPA recommends a new analysis based on the 2016 master plan to adequately address direct, secondary and cumulative impacts of the 12,399-acre master-planned community.

In addition, EPA recommends an updated mitigation plan in compliance with the 2008 Corps/EPA Mitigation Rule (40 CFR 230 Subpart J) and Corps South Pacific Division (SPD) Mitigation Guidelines. The Mitigation Rule states that the mitigation ratio must be higher than one-to-one where necessary to account for several factors, including the method of compensation (*e.g.*, preservation) and temporal losses (40 CFR 230.93(f)(2)). The applicant's 2005 mitigation should be updated to meet these requirements, while also considering the 2016 Master Plan.

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The updated mitigation plan should meet the Mitigation Rule minimum requirements for mitigation plans (40 CFR 230.94(c)), including the following:

- ecological performance standards (40 CFR 230.95) related to hydrology, channel stability, native plant cover, and invasive plant cover, rather than acreage of each habitat type as contained in the 2005 mitigation plan;
- a monitoring plan to evaluate whether the performance standards are being met during a minimum 5-year monitoring period (40 CFR 230.96(b)); and
- a long-term management plan to identify ongoing maintenance, monitoring, and reporting, as well as a funding source for long-term management of the mitigation sites (40 CFR 230.97).

Our concerns regarding the analysis of the project's impacts to waters discussed in our previous letters to the Corps remain (attached).[1]

Thank you for the opportunity to provide comments on the PN. As additional information becomes available on this proposal, please have your project manager contact Melissa Scianni at (213) 244-1817.

Sincerely,

Samuel G. Ziegler
Manager, Wetlands Section

Attachments: EPA letters to the Corps dated June 14, 2004, July 1, 2004, and May 25, 2006
cc: Jason Douglas, U.S. Fish and Wildlife Service, Tucson

[1] EPA letters to the Corps dated June 14, 2004, July 1, 2004, and May 25, 2006.

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