April 25, 2014

Jason Bahe, Project Manager  
Pima County Department of Transportation  
201 N. Stone Avenue 4th Floor  
Tucson, Arizona 85701

SUBJECT: Preliminary Jurisdictional Determination regarding geographic jurisdiction

Dear Mr. Bahe:

I am responding to your request (File No. SPL-2014-00196-KWG) dated March 13, 2014 for a preliminary Department of the Army jurisdictional determination (JD) for the Sunset Road: Silverbell Road to I-10 Eastbound project site (-111.048808/32.305666) located within the city of Tucson, Pima County, Arizona.

The Corps’ evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, a permit would likely be required. The first test determines whether or not the proposed project is located within the Corps’ geographic jurisdiction (i.e., it is within a water of the United States). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. This evaluation pertains only to geographic jurisdiction.

Based on available information, I have preliminarily determined waters of the U.S. may be present on the Sunset Road: Silverbell Road to I-10 Eastbound project site in the approximate locations noted on the enclosed drawing(s). The basis for this finding can be found on the enclosed Preliminary Jurisdictional Determination (JD) form. Please be aware preliminary JDs are non-binding indications of the presence of waters of the U.S., including wetlands, on a parcel, are advisory in nature and may not be appealed. If you accept this determination, please sign and date this form and return to the issuing office within two weeks of receipt. However, you are hereby informed of your option to request an approved jurisdictional determination, which may be appealed. Note that for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

Preliminary and approved jurisdictional determinations are fully explained in the enclosed Regulatory Guidance Letter 08-02, dated June 26, 2008. Further, proffered individual permits
(and all terms and conditions contained therein), individual permit denials, and any jurisdictional issues may also be appealed pursuant to 33 CFR Part 331.

This determination was conducted to identify the extent of the Corps’ Clean Water Act jurisdiction on the Sunset Road: Silverbell Road to I-10 Eastbound project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

Thank you for participating in the regulatory program. If you have any questions, please contact Kevin W. Grove at 602-230-6957 or via e-mail at Kevin.W.Grove@usace.army.mil. Please complete the customer survey form located at the link provided below which would help me to evaluate and improve the regulatory experience for others.
http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey

Sincerely,

Sallie Diebolt
Chief, Arizona Branch
Regulatory Division

Enclosure(s)

1) Preliminary Jurisdictional Determination Form

2) Preliminary Jurisdictional Determination Maps
PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there “may be” waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

District Office: [L.A. District]/2 File/ORM #: SPL-2014-00196-KWJ PJD Date: April 23, 2014

State: AZ City/County: Tucson/Pima
Nearest Waterbody: Santa Cruz River
Location: TRS, LatLong or UTM: Approximate midpoint: 495661.7mE, 3574432.4mN, UTM Zone 12N, NAD 83

Identify (Estimate) Amount of Waters in the Review Area:
Non-Wetland Waters: See p. 2 linear ft width 0.045 acres N/A
Wetlands: 0.115 acre(s) Cowardin Class: Palaetine, emergent

Name/ Address of Person Requesting PJD: Jason Bahe
Pima County Department of Transportation
201 N. Stone Ave., 4th Floor
Tucson, AZ 85701-1207

Identify (Estimate) Amount of Waters in the Review Area:
Non-Wetland Waters:
Wetlands:

Name of Any Water Bodies on the Site Identified as Section 10 Waters:
Tidal:
Non-Tidal:

Office (Desk) Determination Field Determination:
Date of Field Trip: 5-2013

SUPPORTING DATA: Data reviewed for preliminary JD (check all that apply - checked items should be included in case file and, where checked and requested, appropriately reference sources below):
- Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:
- Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- Office concurs with data sheets/delineation report.
- Office does not concur with data sheets/delineation report.
- Data sheets prepared by the Corps
- U.S. Geological Survey Hydrologic Atlas:
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s), Cite quad name:
- USDA Natural Resources Conservation Service Soil Survey. Citation:
  - Tucson/Avon Valley Area, Arizona (AZ667)
- National wetlands inventory map(s). Cite name:
- State/Local wetland inventory map(s):
- FEMA/FIRM maps:
- 100-year Floodplain Elevation Is:
- Photographs:
  - Aerial (Name & Date):
  - Other (Name & Date):
- Previous determination(s). File no. and date of response letter:

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

Signature and Date of Regulatory Project Manager (REQUIRED): April 23, 2014
Signature and Date of Person Requesting Preliminary JD (REQUIRED, unless obtaining the signature is impracticable): 5/5/14

EXPLANATION OF PRELIMINARY AND APPROVED JURISDICTIONAL DETERMINATIONS:
1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to request an approved JD in this instance and at this time.
2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring “preconstruction notification” (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant does not have the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon any permit authorization without requesting an approved JD constitutes the applicant’s acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a preapproved individual permit) or undertaking any activity in reliance upon any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site are affected by activity (or proposed activity) in any way that activity is jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court, and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a preapproved individual permit (and all terms and conditions contained therein), or individual permit denial may be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(c)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.
PRELIMINARY JURISDICTIONAL DETERMINATION FORM

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

Appendix A - Sites

<table>
<thead>
<tr>
<th>Site Number</th>
<th>Latitude</th>
<th>Longitude</th>
<th>Cowardin Class</th>
<th>Est. Amount of Aquatic Resource in Review Area</th>
<th>Class of Aquatic Resource</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wash 1</td>
<td>32.305666N</td>
<td>-111.048808W</td>
<td>Riverine</td>
<td>3.566</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
<tr>
<td>Wash 2</td>
<td>32.308668N</td>
<td>-111.051901W</td>
<td>Riverine</td>
<td>0.008</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
<tr>
<td>Wash 3</td>
<td>32.307687N</td>
<td>-111.051372W</td>
<td>Riverine</td>
<td>0.008</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
<tr>
<td>Wash 4</td>
<td>32.306468N</td>
<td>-111.050774W</td>
<td>Riverine</td>
<td>0.112</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
<tr>
<td>Wash 5</td>
<td>32.306133N</td>
<td>-111.050645W</td>
<td>Riverine</td>
<td>0.106</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
<tr>
<td>Wash 6</td>
<td>32.307030N</td>
<td>-111.050486W</td>
<td>Riverine</td>
<td>0.201</td>
<td>Non-Section 10 non-wetld.</td>
</tr>
</tbody>
</table>

Notes:

Wash 1 (Santa Cruz River) is listed separately from wetlands to show that there are wetlands and non-wetlands associated with the river, but all wetlands were at or below the ordinary high water mark of Wash 1 (Santa Cruz River). Therefore, the total acreage of Waters associated with the Santa Cruz River is 3.566 acres of non-wetland Waters + 0.115 acre of wetlands, for a total of 3.681 acres of Waters. The latitude and longitude listed for the wetlands are the latitude and longitude for Wash 1 because the wetlands are distributed along the river.

Wash 7 32.303284N -111.048297W Riverine 0.014 Non-Section 10 non-wetld
Wash 8 32.303397N -111.048600W Riverine 0.004 Non-Section 10 non-wetld
Wash 9 32.305465N -111.048954W Riverine 0.008 Non-Section 10 non-wetld
Wash 10 32.306133N -111.050122W Riverine 0.005 Non-Section 10 non-wetld
Wash 11 32.306182N -111.049952W Riverine 0.003 Non-Section 10 non-wetld
Wash 12 32.304758N -111.048058W Riverine 0.006 Non-Section 10 non-wetld
Santa Cruz 32.305666N -111.048808W Palustrine, emergent 0.115 Non-Section 10 wetlands

The survey area contained perennial and ephemeral Waters of the United States:
Perennial (Wash 1, Santa Cruz River), approximately 3.681 acres (including 0.115 acre of wetlands)
Ephemeral (Washes 2-12), approximately 0.475 acre
Corps navigable waters' study: "CESPL-RG-A MFR: Determination of Two Reaches of the Santa Cruz River as Traditional Navigable Waters" (May 23, 2008)