



DEPARTMENT OF THE ARMY
JACKSONVILLE DISTRICT CORPS OF ENGINEERS
ANTILLES OFFICE
FUND. ANGEL RAMOS ANNEX, SUITE 202
383 F.D. ROOSEVELT AVE.
SAN JUAN, PUERTO RICO 00918

REPLY TO
ATTENTION OF

August 31, 2016

Regulatory Division
South Permits Branch
Antilles Section
SAJ-1982-05019 (SP-JCM)

William F. McComb, PE
P.O. Box 303408
St. Thomas, US Virgin Islands 00803

Dear Mr. McComb:

Reference is made to your Department of the Army (DA) permit application, submitted on behalf of T-Rex St. John, LLC for the proposed development of the Sirius Marina. The project would be located at Coral Harbor, 10A Estate Emmaus, Coral Bay, St. John, U.S. Virgin Islands. Please refer to number SAJ-1982-05019 (SP-JCM) in future correspondence regarding this case.

We have completed the review of the information and documents you submitted on July 12, 2016, in response to our letter dated March 8, 2016. Please be advised that your response did not adequately address all the issues and information requests detailed in our letter. As stated in our letter, your submittal of all the information requested is necessary, pursuant to the requirements of the National Environmental Policy Act (NEPA), Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act (RHA), Section 106 of the National Historic Preservation Act (NHPA), Section 7 of the Endangered Species Act (ESA) and the Magnuson-Stevens Act (MSA), for the U.S. Army Corps of Engineers (Corps) to be able to complete the required regulatory processing and evaluation of, and make a final decision regarding, your permit application.

Below we provide comments and details regarding the information missing from your response. Our comments are generally provided in the same order and under the same topics presented in our letter dated March 8, 2016.

A. Project Scope, Description and Drawings - The Corps is aware from documents included in your DA permit application, as well as from additional documents submitted to the attention of the Virgin Islands Department of Planning and Natural Resources (DPNR) and the Legislature of the Virgin Islands for the proposed Sirius Resort and Marina, that the proposed marina would be built in association with a larger development including: hotel/condominium units, underground and above ground

parking, pool, shopping plaza, wastewater treatment plant, reverse osmosis plant and a baseball field.

Your response to our March 8, 2016, letter indicated that the proposed marina is a financially viable, stand-alone project with independent utilities from any future resort. However, you did not provide any documentation in support of this assertion. In addition, you did not provide any information to clarify the scope of the proposed resort and its relationship with the proposed marina, particularly whether the proposed resort would have independent utility and economic viability without the proposed marina and vice versa. Furthermore, you did not provide any information to clarify whether any components of the proposed resort development would require discharges of dredge or fill material into waters of the U.S., or the installation of structures or work in navigable waters of the U.S. On the other hand, documents available to the Corps indicate that a reverse osmosis pipeline extending into the waters of Coral Bay would be installed as part of the development of the proposed resort. Please be advised that Corps regulations at 33 CFR 325.1 (d)(2) state that "All activities which the applicant plans to undertake which are reasonably related to the same project and for which a DA permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement."

The project related information currently available to the Corps, suggests that the proposed marina and the other components of the proposed resort could be interrelated and interdependent components of a single and complete project, which should be evaluated as a single action for NEPA and Corps Regulatory purposes. We ask you once again to please provide additional detailed information that could rebut this assertion, including all the information indicated above and requested in our March 8, 2016, letter. If sufficient documentation is not provided in this regard, the Corps will have to reject the present application as incomplete and request your submittal of a new application describing the entire resort together with the proposed marina as a single and complete project.

Also, please note that the revised project drawings submitted with your response are still inconsistent with regards to some of the components of the project. In particular, the drawings submitted do not depict the location of the boat dry stack, wastewater treatment plant, the reverse osmosis system/plant, potable water and brackish water pipelines, the potable water cistern or tanks, green areas that would be irrigated with effluent from the waste water treatment plant, and the emergency generator. Depicting the proposed location for those components is necessary to confirm whether their construction or operation would result in impacts to waters of the U.S., including wetlands. In addition, the marina plan view drawing submitted does not depict the location of any proposed piles. Furthermore, the location and numbering of the cross sections and their corresponding sheets, as identified in the plan view drawing, do not match the detailed cross section drawings provided. Moreover, the drawings submitted

do not depict the location of the tidal channel that connects Coral Bay to the salt pond located to the east of the project site with respect to the location of the proposed bulkhead cap. Although your response indicates that this tidal channel would not be impacted by the bulkhead, other drawings submitted with the permit application indicate that the easternmost section of the proposed bulkhead still intersects the tidal channel. Lastly, even though your written response states that it would remain in place, the drawings submitted with your response indicate that the existing dinghy dock would be demolished and removed. Therefore, we again request your submittal of revised drawings, accurately and consistently addressing the above issues.

B. Project Location

1. Alternatives analysis - Although your response included a matrix with ratings or values for the various alternative sites considered for the project, the evaluation criteria and the system, method or rationale used to rate each alternative site under each criterion were not adequately discussed or explained. For example, the Environmental Concerns criterion is too broadly defined, making it impossible to understand which specific environmental factors were weighted. That is, does it include quality of habitats, extent of habitats, presence of sensitive or protected resources, etc.? If it does, how those factors were considered and weighted to compare the alternative sites and assign the corresponding ratings? The same would apply to the other evaluation criteria. In addition, please note that even though a rating of 5 was assigned to the Land Availability criterion for the Coral Harbor East site, other sections of your response (please see page 13 of your response) indicate that discharging fill material to construct the bulkhead and expand the boat service facility is required because "the amount of available upland areas is not sufficient". This appears to contradict the rating assigned to Land Availability, and should be explained. Furthermore, the Coastal Engineering Assessment submitted with your response indicates that flushing time for the proposed marina would not meet the Coastal Zone Management guidelines and parameters established by the DPNR. However, this fact is not reflected in the alternatives analysis, which assigned a rating of 5 to the Environmental Concerns and Location criteria. Therefore, please revise your alternatives analysis in accordance with the comments provided in our March 8, 2016 letter, and include a narrative discussing and clarifying in more detail the criteria used to compare the alternatives and the rationale applied to assign scores to each alternative.

2. Virgin Islands National Park (VINP) and Virgin Islands Coral Reef National Monument (VICRNM) - Your response did not include the Corps' requested assessment of the potential direct, indirect and cumulative effects of the proposed project on the resources of the VINP, VICRNM and Lagoon Point National Natural Landmark. An adequate assessment of those potential effects is necessary to develop appropriate measures to mitigate those effects. In our letter we emphasized that it is essential for our evaluation of your permit application that you please complete and submit this assessment with the corresponding proposed mitigation measures. In spite of that, your

response only asserted that the number of marina slips proposed when compared to the overall boat traffic in Coral Bay would have only minimal impact on sites outside of Coral Bay, but did not include any data or analysis to support such assertion. Therefore, we once again ask that you please submit the information and analysis requested in this regard in our letter dated March 8, 2016.

3. Economics - Your response to this topic highlighted your expected or projected benefits of the project to the community, with general statements about increased tourism, job creation, benefits to existing business, and promotion of new business and new services. However, no actual socioeconomic data, studies or analysis were provided to support those statements. In addition, no data or analysis were provided to assess the potential adverse effects of the project on the existing ecotourism based local economy and business of Coral Bay. Therefore, we ask that you please submit the information and analysis requested in this regard in our letter dated March 8, 2016.

In addition, your response to this topic mentioned that the development would also construct a new ball field and basketball court for the community on the adjoining parcel to the marina. However, these two components were not included in the description of the proposed marina submitted with your permit application. Therefore, please clarify whether these two components are indeed part of the proposed marina or whether they are part of the associated resort development. If they are part of the proposed marina, please indicate their proposed location in the project drawings and describe whether their construction would impact any waters of the United States, including wetlands.

4. Infrastructure - Your response stated that preliminary research indicates that the proposed wells at Parcel 10C could have a daily yield of 30,000 gallons/day of brackish/freshwater and that a detailed Groundwater Development Program would be undertaken once all permits for the project are received. Similar statements were made in the Environmental Assessment Report (EAR), which was submitted with your permit application. However, neither the EAR, the Preliminary Hydrogeologic Summary report included in the Environmental Assessment Report, or your latest response provided test well data or indicated the source of the well data, which served as the basis for such calculations. The Corps remains concerned with the potential impacts of the proposed marina on the existing aquifer and wells in the area. These concerns are heightened in light of the resort, which is also being proposed in association with the marina, and its potential cumulative impacts on the aquifer. We again request your submittal of more specific data and studies to adequately assess the capacity of the aquifer and the viability of the proposed well(s) to satisfy the needs of the marina, and whether additional sources including R/O water extraction lines would be required. If R/O lines would be required, they must be included in the project description now to prevent segmentation or piecemealing in the evaluation of the potential environmental effects of the proposed marina. Also, please provide a more detailed plan describing the

proposed solid waste management plan for the marina, including the proposed location for the solid waste storage area in the project's plan view drawing, and details regarding the transport of the solid waste from the project site to the St. Thomas Landfill. In addition, we reiterate our request for copies of letters from the corresponding agencies (i.e., Virgin Islands Water and Power Authority, Virgin Islands Waste Management Authority, and Virgin Islands Department of Public Works) evaluating the proposed marina.

C. Size and Design of Proposed Docking Structure

The Corps remains concerned with the size and layout of the proposed marina, and its potential impacts to the existing resources, conditions and uses within Coral Bay. As discussed below in more detail, we understand that additional practicable alternatives and measures, including reductions and/or modifications in the size, layout or design of the proposed project and structures, are available, which could prevent potential adverse effects on the aquatic resources, and the existing conditions and uses within Coral Bay.

1. Loss of waters of the U.S. - Your response included revisions to the project design and layout, which reduce the size of the proposed dredge, fill and mangrove impact areas. Your response also indicated that discharging fill material into waters of the U.S. to construct the bulkhead is required for the boat service facility, specifically to maneuver boats in the service yard and launch boats at the proposed ramp, since the amount of available upland areas is not sufficient. However, the drawings submitted with your response depict that portions of the proposed Dock Master and Service Buildings would also be built over the proposed fill areas. The Corps understands that adjoining uplands located to the west of the proposed marina are available to the applicant, as they are part of the resort development that is being proposed in association with the marina. In spite of that, your response did not discuss your evaluation of the practicability of locating some of the components of the proposed marina in those uplands. In addition, your response did not address our request of evaluating the practicability of maintaining and incorporating the existing boat ramp with or without modifications into the design of the proposed marina. Furthermore, via e-mail dated September 8, 2016, we forwarded to your attention documents received from the Save Coral Bay organization, which identify an additional alternative design for the proposed marina. This alternative design appears to reduce potential impacts to waters of the U.S., by locating the proposed docking structure to the west of the existing dinghy dock and incorporating the existing ramp. On the other hand, even though your response stated the opposite, our review of the revised drawings indicate that the proposed bulkhead would still sever the tidal channel that connects Coral Bay with the salt pond located to the east of the proposed marina. We ask that you evaluate and discuss the practicability of the alternative layout identified by Save Coral Bay. In addition, we ask that you evaluate and discuss the practicability of shortening or modifying the design of the proposed bulkhead to avoid and minimize impacts to the

tidal channel, salt pond and associated mangrove wetlands. Lastly, to further clarify some of our concerns regarding the accuracy of the estimates of potential impacts to waters of the United States, including wetlands, the Corps would like to coordinate with you an inspection of the proposed project site as soon as possible. The Corps remains very concerned with the potential impact of the proposed project to waters of the U.S. We understand that additional practicable measures are available, including those described above, which could result in further avoidance and minimization of impacts to waters of the U.S. Therefore, we ask you to evaluate and discuss further alternatives, including the measures described above, to further avoid and minimize the impacts of the proposed marina to waters of the United States.

2. Impacts to seagrass and benthic habitats - We disagree with your estimate of potential seagrass impact areas. Your estimate continues to focus only on the footprints of the dredge area, the docking structure and slips, but ignores potential impacts from spudding and anchoring from work vessels and barges, as well as propeller wash and turbidity generated by vessels and barges during construction and operation of the marina. The implementation of the BMPs referenced in your response, such as turbidity barriers, would help minimize potential turbidity and sedimentation impacts to benthic habitats and SUV outside of the barriers, but not inside. In addition, turbidity barriers would not prevent the direct impacts of spudding or anchoring in areas with SUV. Furthermore, the marina is being designed for vessels from 35 to 70 feet in length, with flexibility to accommodate vessels up to 150 feet. The use of such size vessels during the operation of the marina, including fuel and service barges, could be reasonably expected to stir up sediments from the marine bottom which could result in chronic impacts to existing SUV, including seagrasses.

Without an accurate estimate of potential impacts it would not be possible to adequately determine and implement the corresponding avoidance, minimization and compensation measures. Therefore, we again ask that you revise your assessment of potential impacts to seagrasses and benthic habitats, evaluate additional avoidance and minimization measures such as reductions in the size of the proposed docking structure and/or use of grated decking for the proposed docks, and submit an adequate compensatory plan to offset those impacts, as requested in our March 8, 2016, letter. The assessment of potential impacts and the corresponding mitigation measures must also consider and address the indirect and cumulative impacts of the proposed marina, including potential impacts to benthic habitats, which could result from the increased boat activity that the project would generate, the relocation of the existing mooring buoys required for the construction of the proposed marina, and the reasonably foreseeable future cumulative impacts of the proposed marina, its associated resort, and the St. John Marina (proposed by others at Coral Bay).

Your response indicated that you are in the process of completing an Essential Fish Habitat study to address the concerns presented by NOAA - National Marine Fisheries Service - Habitat Conservation Division (NMFS-HCD). Please ensure that this

study addresses the concerns described above. This study should be submitted to the Corps for coordination and consultation with NMFS-HCD, pursuant to the requirements of the MSA.

3. Existing mooring buoys and moored boats - We agree that, as stated in your response, the owners of the affected boats currently anchored or tied to the existing mooring buoys within the footprint of the proposed marina at Coral Bay would have to coordinate with the DPNR to request authorization for new mooring buoys elsewhere. As a matter of fact, those boat owners would also have to obtain a Corps permit prior to installing new mooring buoys. However, the point that we were emphasizing in our March 8, 2016, letter is that the relocation of the existing buoys at Coral Bay would not take place but for the construction of the proposed marina. Accordingly, the relocation of the mooring buoys is an indirect result of the proposed marina. As such, the evaluation of the indirect and cumulative effects of proposed marina must consider the effects of the relocation of the existing mooring buoys and moored boats. In addition to potential effects to benthic habitats, the relocation of the existing mooring buoys and moored boats represents a change in the existing uses at Coral Bay, which must also be addressed as part of our evaluation of the proposed marina. Therefore, we again request that you describe the proposed plan and process for relocating the existing moorings and boats, including details about the coordination that would be required with boat owners and the USVI-Department of Planning and Natural Resources (USVI-DPNR). In addition, we again request that you discuss the measures that would be implemented as part of proposed marina to avoid, minimize and compensate any adverse effects to benthic habitats and present uses at Coral Bay, which could result from the relocation of the existing mooring buoys and moored boats from the footprint of the proposed marina.

4. Water quality, flow and circulation - Your response did not provide the additional information we requested regarding the proposed Water Quality Monitoring Plan, particularly more detailed information regarding the proposed location of monitoring stations, as well as thresholds and contingencies for environmental monitoring of benthic organisms and sediment loading. This information is necessary for us to complete our required consultations with NMFS - Protected Resources Division (NMFS-PRD) and NMFS-HCD for your permit application. In addition, the Coastal Engineering Assessment submitted with your response indicated that flushing time for the proposed marina would not meet the Coastal Zone Management guidelines and parameters established by the DPNR. However, this fact is not reflected in the alternatives analysis submitted with your response. In addition, your response failed to identify and discuss the potential effects to the aquatic environment, which could result from the development of the proposed marina in this limited flushing conditions. Furthermore, your response did not discuss any measures that would be implemented to avoid, minimize and compensate any potential adverse effects to water quality and benthic habitats, which could result from this limited flushing of the marina basin.

Therefore, we ask again that you submit the information requested in our March 8, 2016, letter regarding this topic.

5. Ambient and underwater noise - Your response repeated the exact same information that was included in the EAR submitted as part of the permit application, but did not address the specific information requested in our March 8, 2016, letter. Therefore, we again ask that you provide the information requested regarding this topic. This information is necessary to complete the required interagency consultation procedures with NMFS-PRD for your permit application pursuant to Section 7 of the ESA.

6. Historic and cultural resources - Please be advised that pursuant to 33 CFR 325 Appendix C and Section 106 of the NHPA, it is the Corps responsibility to evaluate and make determinations regarding the potential effects to historic properties of proposed actions requiring our authorization and consult with the Virgin Islands State Historic Preservation Office (SHPO) with regards to such determinations. Based on the available information, the Corps understands that the Coral Harbor dock, which presently serves as a dinghy dock, could meet the criteria for inclusion in the National Register of Historic Places (NRHP). An evaluation of potential eligibility for inclusion in the NRHP is necessary to confirm our determination and complete the corresponding consultation with the SHPO. As stated above, even though your response indicated that the dinghy dock would not be removed, the project drawings submitted with your response still depict that the dinghy dock would be demolished and removed. As requested above, it is important that you clarify this contradiction. On the other hand, even if it is not removed, the dock is still located within the permit area of the proposed marina and any potential effects of the proposed marina on the dock must be evaluated. Based on the above, we reiterate our request that you complete and submit for our attention an evaluation of the potential eligibility of the Coral Bay dinghy dock for inclusion in the National Register of Historic Places (NRHP). In addition, we continue to request that you provide us with copies of any communications you may have received from the SHPO regarding the evaluation of the proposed project, particularly with respect with archaeological survey reports submitted with the permit application.

D. Cumulative Impacts - As stated in our March 8, 2016, letter, the Corps is very concerned with the potential cumulative impacts of the proposed marina on the aquatic environment of Coral Bay, Hurricane Hole, VINP, VICRNM, and Lagoon Point NNL, and the limited information provided as part of your permit application to address those potential cumulative impacts, particularly in light of the facts that the applicant is also proposing to develop a hotel-condominium resort adjoining the marina, that another marina (i.e., St. John Marina; DA Permit application number SAJ-2004-12518) is being proposed within Coral Bay, and that on October 19, 2015, the Corps issued a permit to the CBCC for the removal of derelict vessels within Coral Bay (DA Permit number SAJ-2015-02010). The Council for Environmental Quality (CEQ) regulations define cumulative effects as the impact on the environment which results from the incremental

impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR 1508.7). Federal regulations implementing NEPA and the Corps Regulatory Program mandate the evaluation of the potential cumulative impacts, which could result from a proposed activity requiring a DA permit. Moreover, Corps Regulations require avoidance, minimization and compensation of all the potential impacts to waters of the U.S. and the aquatic environment, which could result from a proposed activity requiring a DA permit, including its direct, indirect and cumulative impacts. In spite of the above, your response indicated that it is not possible for Sirius Marina to assess any cumulative impacts. Your response also stated that the small number of marina slips being proposed would only have minimal impact on the overall boater traffic and visitation on sites outside of Coral Bay, but did not provide any data or analysis to support this statement. In order for the Corps to adequately consider the potential cumulative environmental impacts of your proposed project and comply with the corresponding regulatory requirements, we again request that you provide an evaluation of the potential past, present and foreseeable future environmental impacts of the proposed marina in relation to the above referenced projects and any other existing or proposed projects, which have affected or could affect the aquatic environment at Coral Bay, Hurricane Hole, VINP, VICRNM, and Lagoon Point NNL.

E. Compensatory Mitigation Plan - Your response stated that a compensatory mitigation plan would be developed using a Habitat Equivalency Model in conjunction with all regulatory bodies including NOAA-NMFS-HCD. As stated in our March 8, 2016, letter, the mitigation described in your permit application would not provide sufficient compensation for the potential impacts of the proposed project to the aquatic environment, particularly to waters of the U.S., mangroves and seagrasses. Once you demonstrate that the potential impacts of the proposed project to waters of the US and seagrasses have been avoided and minimized to the maximum extent possible and the extent of those impacts has been accurately documented, a compensatory mitigation plan to adequately offset those impacts must be developed and submitted to the Corps in accordance with the requirements of 33 CFR 332. This compensatory mitigation plan would be part of our coordination and consultation with NMFS, USFWS and EPA to satisfy the requirements of NEPA, ESA, MSA and the CWA.

Your application will be held in abeyance for 30 days pending receipt of your response to this letter, including all the information requested above. Your failure to submit the information requested herein could prevent the Corps from completing the required regulatory evaluation of your permit application, including the corresponding consultations and/or coordination with NMFS, FWS, SHPO and EPA. If within the next 30 days from the date of this letter do not receive a written response from you, adequately addressing all the information requested herein, we will take final action on your DA permit application. Final action could include deactivation or denial of your permit application. Should the file be withdrawn, it will be retained for a period of one year.

In addition, we understand that a meeting to discuss various aspects of your permit application, including the process and next steps to complete the evaluation of the application and details about the information being requested by the Corps, would be very beneficial. Please contact the Project Manager identified below to coordinate this meeting at your earliest convenience.

You are cautioned that work performed below the mean high waterline or ordinary high waterline in waters of the U.S., or the discharge of dredged or fill material into adjacent wetlands, without a DA permit would constitute a violation of Federal laws and subject you to possible enforcement action. Receipt of a permit from other agency does not obviate the requirement for obtaining a DA permit for the work described above prior to commencing work.

Thank you for your cooperation with our Regulatory Program. If you have any questions or concerns regarding this matter, please contact José A. Cedeño-Maldonado, Project Manager, at the letterhead address, by e-mail at jose.cedeno-maldonado@usace.army.mil, or by telephone at 787-729-6944.

Sincerely,

Sindulfo Castillo
Chief, Antilles Section

Copy Furnished: Roy Calhoun, T-Rex St. John, LLC, 45 Maple Street, Garden City, NY 11530