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AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

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July 25, 2016

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by appointment only

Via Electronic Mail

Donnie Kinard, Chief-Regulatory
Osvaldo Collazo
U.S. Army Corps of Engineers
Jacksonville District Office
701 San Marco Boulevard
Jacksonville, FL 32207

Via Electronic Mail

José Cedeño-Maldonado
Sindolfo Castillo, P.E.
U.S. Army Corps of Engineers
Jacksonville District Office
c/o Antilles Permits Section
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San Juan, Puerto Rico 00901-3299

**Partner responsible - Bruce S. Katcher*

Re: Proposed Construction of St. John Marina Coral Bay, St. John,
USVI SAJ-200412518 (SP-JMS)

Dear Messrs. Kinard, Collazo, Sasso and Castillo:

On behalf of my client Coral Bay Community Council ("CBCC") and nineteen individuals, I wanted to bring to your attention a recent development that further impacts the above-referenced permit application. As you are aware, by letter dated October 22, 2015 the Corps advised the applicant, Summers End Group ("SEG"), that SEG had thirty (30) days to respond to extensive comments submitted on behalf of the Corps, EPA, NOAA, Fish and Wildlife and others. SEG failed to respond to the comments within thirty (30) days at which time the Corps notified SEG that its application had been withdrawn from the review process and would be held in abeyance until complete responses were provided to the Corps, but in no event would the application remain in abeyance for longer than one year.

Nine months later, SEG has not responded to these extensive agency comments. However, a recent development casts further doubt on the viability of the proposed marina. As you are aware, by letters dated January 16, 2015 and April 1, 2016, I notified the Corps that contrary to SEG's legally required certifications in its application, SEG no longer had legal rights to certain upland parcels (Parcels 13-A and 13-B) essential to SEG's application and proposed project because SEG's Power of Attorney on such parcels had expired. As the Corps' regulations state, a signature on the application "is an affirmation that the applicant possesses or will possess the requisite property interest to undertake the activity in the application." 33 C.F.R. § 325.1(d)(8). Upon termination of the relevant Power of Attorney (which only gave SEG the right to apply for permits), SEG's affirmation was no longer accurate.



used for the proposed project. As such, if SEG wants to proceed, (i) it must submit a new application in its entirety, accommodating for the loss of these critical features of the proposed project, and (ii) the Corps' permit review process, including the public notice, must start over.

Specifically, parcels 13-A and 13-B Estate Carolina (the "Voyages Parcels") were sold to a local entrepreneur named Paul Sabers. Mr. Sabers has confirmed in writing and on the public record that he does not and will not give SEG any authority to apply for permits using the Voyages Parcels.

Consistent with Mr. Sabers position, on July 13, 2016, pursuant to a FOIA request, CBCC received a copy of correspondence from SEG in which SEG confirms, unambiguously, that the Voyager Parcels are no longer available to them for the project:

I just wanted to confirm with you that we will be modifying our upland plans to remove parcels 13-A and 13 B Estate Carolina from the project. This will require some minor shifts in upland features, but will not affect the offshore structures. It will require some minor shifts in catchment basin locations but volumes and discharge points will remain the same.

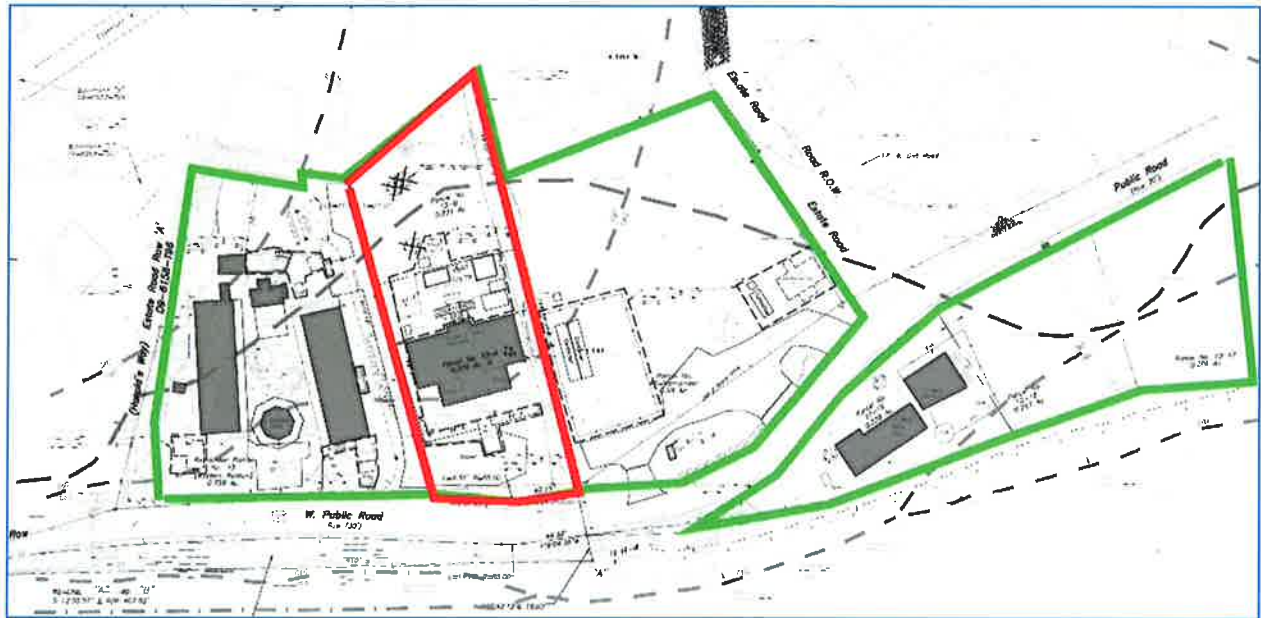
On this basis alone, SEG's application should be denied, because SEG has concluded it cannot proceed as proposed.

We have also reviewed the initial response from the Corps, which we suspect was based on SEG's misrepresentation that removal of the Voyages Parcels will require "some minor shifts in upland facilities."

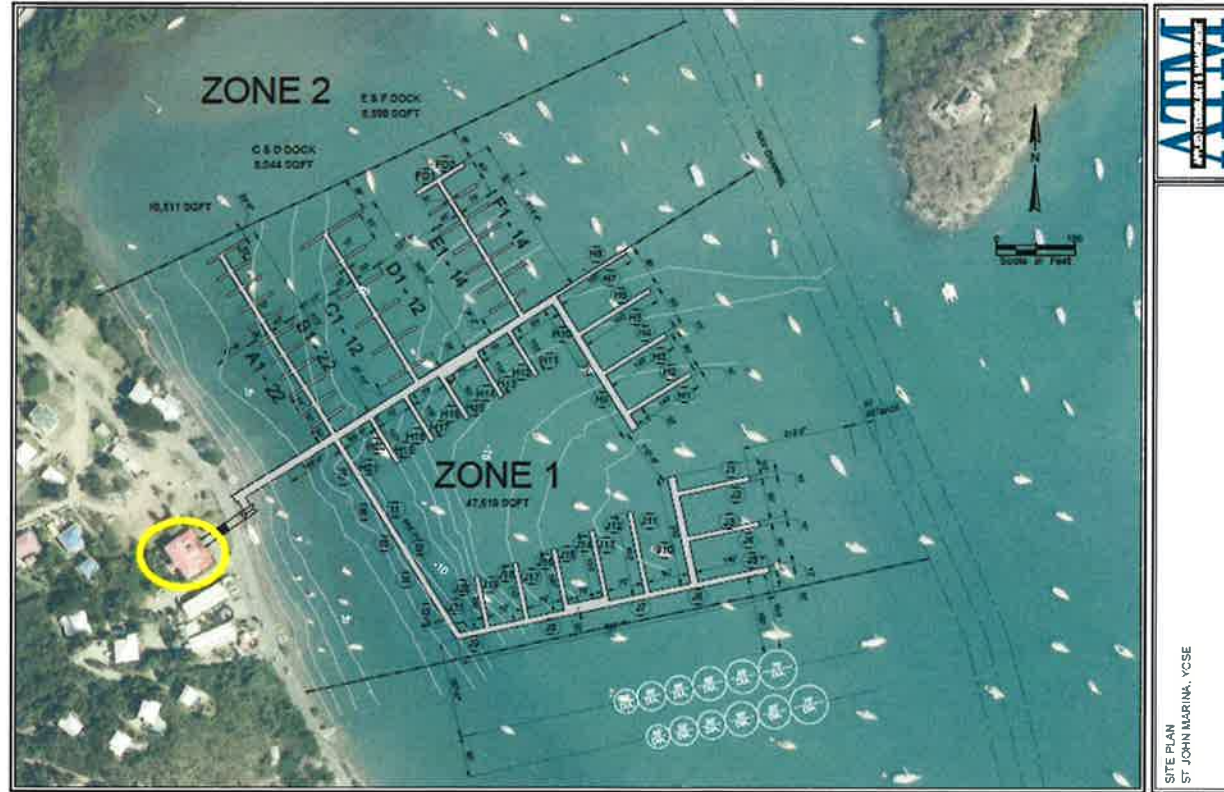
Thanks for the heads up. I do not foresee any major implications from this change in the continuation of our evaluation of the permit application. Please address this change in your response to our previous request for information and provide any revised drawings, descriptions, etc.

Despite these misrepresentations by SEG, the removal of the Voyages Parcels create anything but minor changes to the proposed project. On the contrary, the removal of the Voyages Parcels is fundamental to the project and as a result, a new application is required.

The Voyages Parcels are the central parcel in the overall development project. The illustration below shows its central location and the placement of the main pier of the marina so that it is directly in line with the front door of the Voyages building.



The area outlined in green is the boundary of the upland project as described in the Corps application. The area outlined in red is the Voyages Parcels which are no longer part of the project. This effectively bifurcates the project area into two disconnected pieces. The location of the main pier with respect to the Voyages Parcels (yellow circle) is shown below:



SEG's plan was to create a walkway from the main pier directly to the front entrance of the Voyages Parcels. The loss of the Voyages Parcels will require SEG to reconfigure the marina structures, with unknown impacts on benthic habitat and species.

Features of Parcels 13-A and 13-B Mentioned in Permit Application and Public Notice

There are many project features intended for the Voyages Parcels which were described in the Corps' permit application and the Corps' Public Notice. I've attached highlighted versions of those documents with the references to features on the subject parcels highlighted in yellow. Here are some of the key statements from the July 2015 Public Notice:

"The proposed project also includes redevelopment of upland areas and properties adjoining the proposed marina. This upland redevelopment will provide needed services for the marina, including off-street parking, a restaurant, Customs and Border Protection office, a marina office, marina engineering, marina security, crew shower and locker facilities, apartments to support marina management, fish and farmers market, solid and liquid waste management facilities, stormwater and fueling facilities, as well as additional commercial space. No boat maintenance facilities will be associated with this upland redevelopment. The proposed upland redevelopment would require impacts to a 265 linear foot section of an existing ephemeral tributary for the installation of two culverts for a driveway crossing, and re-contouring to create a storm water retention or treatment areas. The impacts to the tributary would include the discharge of 17 cubic yards of riprap to protect the culverts, seven cubic yards of gravel at the base of the culverts, and seven cubic yards of additional clean fill material around the culverts."

"COMPENSATORY MITIGATION - SEG has offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: To mitigate for impacts that cannot be avoided, red mangroves will be planted amid the riprap along the entire waterfront, watershed management will be undertaken both on site and in the surrounding watershed to improve runoff water quality, ..."

Project Features Identified on Site Plans for 13-A and 13-B Carolina

The project features proposed to be constructed on 13-A and 13-B Carolina are identified in the site plan drawings accompanying SEG's application. These features include:

1. For Parcel 13-A Carolina
 - a. New Domestic Water Treatment Plant
 - b. New Generator
 - c. New Stormwater Management Measures
 - d. New Sanitary Sewer Treatment Facility with Water Recycling
 - e. New Water Reuse Cistern – 5000 gallons
 - f. 9 Off Street Parking Spaces

2. For Parcel 13-B Carolina

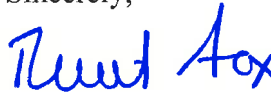
- a. New Wastewater Treatment Plant
- b. New Stormwater Management Measures
- c. New Water Reuse Cistern – 5000 gallons
- d. 16 Off Street Parking Spaces

The main drainage ghut which was the centerpiece of the claimed mitigation through stormwater management, flows through parcels 13-A and 13-B. The measures proposed by SEG (re-contouring the ghut, placing rip-rap, detention ponds, etc.) cannot be constructed because the parcel is no longer part of the project.

As set forth in the Corps' regulations, the public notice of a permit application "must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comments." 33 C.F.R. §§ 325.3(a). Further, the public notice must include a "plan and elevation drawing showing the general and specific site location and character of all proposed activities." *Id.* at (a)(6). Since the issuance of the public notice, the marina proposed by SEG has been changed in such a fundamental manner, by the exclusion of the Voyages Parcels, that the prior public notice no longer conforms to the Corps' requirements.

For these reasons, the current application should be denied and SEG must be required to submit a new application, with the resultant publication of a new and technically accurate public notice, if SEG wishes to proceed with its new re-designated project.

Sincerely,



Robert D. Fox
For MANKO, GOLD, KATCHER & FOX, LLP

RDF/kl

Enclosure

cc: Judith Enck, Administrator, Region 2, USEPA
Charles Lobue, Region 2, USEPA
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Lisamarie Carrubba, NOAA
Roy Crabtree, NMFS
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