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September 18, 2026

VIA EMAIL AND CERTIFIED MAIL

Hon. Howard W. Lutnick, Secretary of Commerce
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Hon. Doug Burgum, Secretary of the Interior
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Hon. Adam R. Telle, Acting Secretary of the Army
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Washington, DC 20310-0101

Lt. Gen. William H. "Butch" Graham Jr., Chief of Engineers
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Col. Brandon L. Bowman, District Commander
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Lt. Col. Matthew A. Westcott
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Alisa Zarbo, Chief
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RE: 60-Day Notice of Intent to Sue Regarding Violations of Section 7 of the Endangered Species Act — U.S. Army Corps of Engineers Permit No. SAJ-2004-12518 (SP-AAZ) and Nationwide Permit Verifications 1, 18, and 27, Summer’s End Group Marina, Coral Harbor, St. John, U.S. Virgin Islands

Dear Secretary Lutnick, Secretary Burgum, Secretary Telle, Lieutenant General Graham, Colonel Bowman, Lieutenant Colonel Westcott and Ms. Zarbo:

This letter serves as notice, pursuant to Section 11(g)(2)(A) of the Endangered Species Act (“ESA”), 16 U.S.C. § 1540(g)(2)(A), of the intent of Save Coral Bay, Inc. (“SCB”), the Coral Bay Community Council (“CBCC”), and David L. Silverman (collectively, the “Noticing Parties”) to file suit against the United States Army Corps of Engineers (“Corps”) for violations of Section 7 of the ESA, 16 U.S.C. § 1536, and its implementing regulations, 50 C.F.R. Part 402. The violations arise from the Corps’ authorization of the Summer’s End Group (“SEG”) 127-position commercial marina and related compensatory-mitigation and shipwreck-avoidance activities in Coral Harbor, St. John, U.S. Virgin Islands.

The Corps’ violations concern, among other things, its reliance on unsupported “not likely to adversely affect” (“NLAA”) determinations; failure to use the best scientific and commercial data available; failure to evaluate the entire federal action and its full action area; failure to evaluate material effects on listed species and designated critical habitat; failure to reinstitute consultation after receiving material new information; and failure to ensure that the authorized action is not likely to jeopardize listed species or destroy or adversely modify designated critical habitat.

The violations are ongoing. The Corps retains discretionary authority over the challenged authorizations, including authority to suspend, revoke, or modify them and to enforce their conditions. If the violations are not cured within sixty days after receipt of this notice, the Noticing Parties intend to commence an action for declaratory and injunctive relief and such other relief as authorized by law.

The Noticing Parties are presently plaintiffs in *Save Coral Bay, Inc., et al. v. U.S. Army Corps of Engineers, et al.*, No. 3:26-cv-00042-ER-GAT (D.V.I.), challenging the same federal approvals under the Administrative Procedure Act and other federal statutes.

A. The ESA Requires the Corps to Ensure That Its Authorized Actions Do Not Jeopardize Listed Species or Adversely Modify Critical Habitat

Section 7(a)(2) of the ESA requires every federal agency, in consultation with the appropriate federal wildlife agency, to ensure that an action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. 16 U.S.C. § 1536(a)(2). Congress further requires federal agencies to use “the best scientific and commercial data available” in fulfilling that obligation. *Id.*

The implementing regulations require a federal agency to review its action at the earliest possible time to determine whether it “may affect” listed species or critical habitat. 50 C.F.R. § 402.14(a). Formal consultation is required unless the action agency obtains the Service’s written concurrence in a determination that the action is not likely to adversely affect listed species or critical habitat. *Id.* § 402.14(b)(1). An NLAA determination is appropriate only where the effects are wholly beneficial, insignificant, or discountable.

The regulations also require the agency to evaluate the entire action and its full action area. “Action area” means “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.” 50 C.F.R. § 402.02. “Effects of the action” include all consequences caused by the proposed action that would not occur but for the action and are reasonably certain to occur, including consequences outside the immediate project area. *Id.*

Finally, where the federal agency retains discretionary federal involvement or control, consultation must be reinitiated when, among other circumstances, “new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered” or when the action is modified in a manner causing an effect not previously considered. 50 C.F.R. § 402.16(a)(2)–(3).

B. The Corps Authorized a Large Commercial Marina and Related Activities Affecting Listed Species and Critical Habitat

The federal actions at issue are the Corps’ authorization of construction and operation of a 127-position commercial marina, consisting of 115 slips and 12 large-vessel moorings, together with the compensatory-mitigation and shipwreck-avoidance work made prerequisites to marina construction, in Coral Harbor, St. John, U.S. Virgin Islands, at approximately 18.343277° N, 64.714555° W. The challenged approvals (collectively, the “Project Approvals”) are: (1) Corps Permit No. SAJ-2004-12518 (SP-AAZ), signed April 23, 2026, authorizing construction and operation of a 127-position commercial marina consisting of 115 slips and 12 large-vessel moorings; (2) a March 31, 2026 Nationwide Permit 27 verification authorizing the Aquatic Ecosystem Restoration Project (“AER Project”); and (3) April 6, 2026 Nationwide Permit 1 and 18 verifications authorizing the shipwreck-avoidance measures.

Marina construction includes installation of approximately 867 steel piles by impact hammer over approximately 174 workdays, together with boardwalk construction, vessel operations, propeller wash, increased sediment resuspension, and associated changes to aquatic habitat. The individual permit makes implementation of the AER Project and the Avoidance Measures Project prerequisites to marina construction.

The action area contains or may affect habitat used by numerous ESA-listed marine species. Species considered in the Corps' consultation included:

- green sea turtle (North Atlantic and South Atlantic DPSs), threatened;
- leatherback sea turtle, endangered;
- loggerhead sea turtle (Northwest Atlantic DPS), threatened;
- hawksbill sea turtle, endangered;
- Nassau grouper, threatened;
- scalloped hammerhead shark (Central and Southwest Atlantic DPS), threatened;
- oceanic whitetip shark, threatened;
- giant manta ray, threatened;
- staghorn coral, threatened;
- elkhorn coral, threatened;
- boulder star coral, threatened;
- mountainous star coral, threatened;
- lobed star coral, threatened;
- rough cactus coral, threatened;
- pillar coral, endangered; and
- queen conch, threatened.

The Corps also evaluated the West Indian manatee and several whale species. The action area includes seagrass, coral habitat, benthic habitat, and areas within designated critical habitat for Nassau grouper and multiple ESA-listed coral species, including designated critical habitat for staghorn and elkhorn corals and for boulder star, lobed star, mountainous star, pillar, and rough cactus corals.

C. The Corps Has Failed to Satisfy Its Section 7(a)(2) Duty

The Corps initially recognized the potential for adverse effects to the species listed above and initiated formal Section 7 consultation in 2018. However, due to SEG's repeated failures to provide required environmental data, the National Marine Fisheries Service was forced to close consultation. The Corps ultimately approved the Project. The Corps lacked a lawful basis to determine that the Project Approvals are not likely to adversely affect listed species and critical habitat or to ensure against jeopardy and adverse modification.

The Corps authorized a major marine construction and operational project while acknowledging that it could produce chronic turbidity, deterioration and loss of seagrass, and loss of sea-turtle foraging and refuge habitat. It nevertheless relied upon unexplained reductions in predicted habitat effects, inconsistent pile-driving assumptions, incomplete information concerning fill quantities and water depths, and an inadequately defined action area.

The Corps' obligation under Section 7(a)(2) is not satisfied. The action agency must ensure that the action it authorizes is analyzed accurately and completely and must use the best scientific and commercial data available. Here, the record demonstrates substantial unresolved deficiencies in the Corps' action description, effects analysis, action-area analysis, and consultation.

D. Actions Necessary to Cure the Violations

The Noticing Parties would consider the violations cured if, within sixty days of receipt of this notice, the Corps:

1. Suspends Permit No. SAJ-2004-12518 and NWP Verifications 1, 18, and 27 pending completion of ESA consultation;
2. Reinitiates consultation with NMFS and USFWS concerning the complete federal action, including the marina, compensatory mitigation, and avoidance measures, evaluated together;
3. Initiates formal consultation wherever the effects cannot properly be characterized as wholly beneficial, insignificant, or discountable, and obtains written concurrence concerning the action actually authorized;
4. Provides the Services with complete and accurate information concerning fill volumes, verified water depths, elevations, construction and fill-placement methods, geotechnical conditions relevant to pile driving, and reproducible acoustic modeling based on the piles, installation methods, and attenuation measures actually authorized;
5. Provides a reasoned and reproducible analysis of indirect turbidity, sediment transport, propeller-wash, and seagrass effects, including reconciliation of the earlier approximately 28.44-acre effects area with the final 0.34-acre estimate;
6. Evaluates the construction and operational sediment pathways associated with EMMA and their effects on nearby listed coral colonies and designated critical habitat;
7. Evaluates the stability of the proposed mangrove islands under reasonably anticipated extreme-weather conditions; and
8. Considers the expert reports, field measurements, and other scientific information submitted by the Noticing Parties.

Conclusion

The Noticing Parties are deeply concerned about the effects of the Project Approvals on Coral Harbor's listed species, seagrass and benthic habitat, and designated critical habitat. The ESA requires the Corps to make its Section 7 determinations using the best scientific and commercial data available and to evaluate the action actually authorized, including all reasonably certain direct and indirect effects.

If the Corps does not cure the violations described above within sixty days after receipt of this notice, the Noticing Parties intend to pursue litigation in federal court seeking declaratory and injunctive relief, including relief prohibiting activities authorized by the Project Approvals pending compliance with Section 7, together with costs of litigation and reasonable attorneys' and expert-witness fees as authorized by 16 U.S.C. § 1540(g)(4).

The Noticing Parties remain willing to meet and confer during the notice period to discuss resolution of these violations.

Please direct all correspondence concerning this notice to:

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Sincerely,

Melody D. Westfall

/s/ Melody Westfall

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