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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 1 2000

Colonel Joe Miller, District Engineer
Attn: Diane S. Griffin
Department of the Army
Jacksonville District Corps of Engineers
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Colonel Miller:

This letter is in response to your request for comments on the public notice for the Town of Palm Beach, Phipps Ocean Park, permit application number 200000380 (IP-DSG). The project purpose is to restore and stabilize approximately 1.9 miles of beach shoreline. The project site is located in the Atlantic Ocean from monument R-116 to R-126, in Sections 11, 14, and 23, Township 44 South, Range 43 East, Town of Palm Beach, Palm Beach County, Florida. The applicant proposes to obtain fill from two offshore borrow areas to place on the beach. The Environmental Protection Agency (EPA) has reviewed the information contained in the public notice and the additional information provided by Coastal Technology Corporation. Ms. Beth Burger of EPA's West Palm Beach office, inspected the site on April 27, 2000, with Mr. Spencer Simon of the U.S. Fish and Wildlife Service (FWS) and Mr. Michael Johnson of the National Marine Fisheries Service (NMFS).

According to 33 C.F.R. 320.4(a), every permit application is subject to a public interest review. In performing the public interest review, the Corps of Engineers is required to consider the relative extent of the public and private need for the proposed structure or work, and the need must be balanced against environmental harm. Based upon our review and site inspection, it is our opinion that the project is not necessary nor in the public interest and environmental harm appears to outweigh the benefits. In the information provided by Coastal Technology Corporation after the public notice was issued, a "critical erosion area" is described, which is defined as "a segment of the shoreline where natural processes or human activity have caused or contributed to erosion and recession of the beach or dune system to such a degree that upland development, recreational interests, wildlife habitat or important cultural resources are threatened or lost." However, information demonstrating that the proposed project area is a critical erosion area was not provided. Further, based upon the site inspection, upland development, recreational interests, wildlife habitat, and important cultural resources do not appear to be threatened by erosion or recession of the beach or dune system. To the contrary, recreational interests (snorkeling areas) and wildlife habitat (the nearshore hardbottom areas) would be lost if the proposed project were implemented. EPA questions the need to restore the beach over the whole project site, and EPA is especially concerned about the area next to the golf course where a large portion of nearshore consists of hardbottom reef habitat. Please provide a detailed discussion of the purpose and need for the complete length of the project.

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EPA also has significant questions and concerns with the proposed borrow areas. Borrow Area 1 contains an outfall pipe. Is it a sewage outfall? A standard permit condition requires that uncontaminated fill material be used for projects such as this. Has there been any testing of sediments at Borrow Area 1 to determine contamination? Dredging in the borrow areas has the potential to impact additional hardbottom or coral reef habitats in the vicinity of the borrow areas. What safeguards will be taken to protect adjacent habitats from turbidity or other detrimental impacts of dredging?

The Clean Water Act, Section 404(b)(1) Guidelines at 40 C.F.R. Section 230.10 prohibit avoidable or significant adverse impacts to the aquatic environment. The Guidelines and the Mitigation Memorandum of Agreement between the Corps of Engineers and EPA require that an applicant demonstrate avoidance and minimization of impacts before compensatory mitigation may be considered. Specifically, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem. The applicant has failed to provide the necessary alternatives analysis. Please provide a detailed alternatives analysis as required under the Guidelines.

In the event that avoidance and minimization issues are satisfied, EPA notes that the compensation plan is inadequate to compensate for the proposed impacts. The public notice stated that 1.5 acres of impacts are proposed. However, the site visit by the EPA, FWS, and NMFS found a much greater area of hardbottom nearshore reef in the project area that would be impacted. The additional information provided by Coastal Technology Corporation also indicated a larger area, 5.18 acres of hardbottom, would be impacted by the project. In the event that avoidance and minimization issues are satisfied, EPA requests compensatory mitigation for all of the acreage of hardbottom impacts.

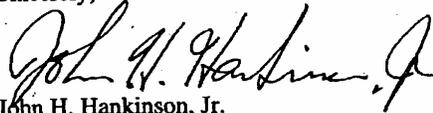
Further, EPA is opposed to the project until the mitigation plan is proved to be adequate compensation for impacts to nearshore hardbottom. The permit issued for renourishment of Juno Beach, permit number 199706559 (IP-BP), required monitoring of the compensatory mitigation area to assess fish recruitment and survival and to compare habitat value of artificial reef habitats placed in various depths with natural hardbottom habitat in shallow water. EPA requests that all beach renourishment projects impacting shallow water reef habitats be held in abeyance until we have reviewed the results of the Juno Beach monitoring study.

Nearshore hardbottom structure is colonized by an ecologically diverse community including sponges, corals, sea worms, bryozoans, and barnacles. This structure provides important shallow water fish habitat. Several lines of evidence suggest that nearshore hardbottom habitats along the mainland coast of east Florida can serve as nursery areas for many coastal fish species and can support considerable larval abundances. (Lindeman, Snyder). This project is within an area identified as Essential Fish Habitat (EFH) by the South Atlantic Fishery Management Council (SAFMC) and the National Marine Fisheries Service for federally managed species. This area is EFH for juvenile and adult gray and schoolmaster snappers, scamp,

speckled hind, yellowedge grouper, Spanish mackerel, white grunt and spiny lobster. Juvenile gray snappers, among others, were observed during the site inspection by the agencies and are listed in the survey supplied by the applicant. Hardbottom habitats are defined as Habitat Areas of Particular Concern in the Fishery Management Plan Amendments by the SAFMC. For these reasons, EPA considers the hardbottom habitats found within this project site aquatic resources of national importance.

EPA requests that authorization for this project be denied. In accordance with the procedural requirements of the 1992 404(q) Memorandum of Agreement Part IV, 3(b) between our agencies, we are advising you that the proposed work will have substantial and unacceptable adverse impacts on aquatic resources of national importance. Thank you for the opportunity to comment on this request for authorization. If you have any questions, please contact Ms. Burger at (561) 616-8878.

Sincerely,



John H. Hankinson, Jr.
Regional Administrator

cc: Spencer Simon, FWS, Vero Beach, F
Michael Johnson, NMFS, Miami, F

[Reference: Lindeman, Kenyon C. and David B. Snyder. Nearshore hardbottom fishes of southeast FL and effects of habitat burial caused by dredging. Fish. Bull. 97:508-525 (1999).]