REGION 2 ADMINISTRATOR
NEW YORK, N.Y. 10007

AUG 15 2024

Col. Brandon L. Bowman
District Commander
U.S. Army Corps of Engineers, Jacksonville District
P.O. Box 4970
Jacksonville, FL 32232-0019

Dear Colonel Bowman:

This is in reference to recently received information regarding a revised proposal for the Summer's End Marina at Coral Bay, St. John, U.S. Virgin Islands (Permit Application No. SAJ-2004-12518). This project has been under review since 2014, with the Summer's End Group, LLC ("SEG" or "Applicant") periodically submitting revised information and modifications that did not substantively change the U.S. Environmental Protection Agency's (EPA) serious concerns about compliance with the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) and the project's unacceptable adverse effects to sea grasses, which are aquatic resources of national importance (ARNIs), within the project area. Based on our concerns, EPA recommended the denial of a Department of the Army permit pursuant to Part IV 3(a) and 3(b) of the Section 404(q) Memorandum of Agreement between our two agencies via a letter dated August 19, 2015, as issuance of the permit would result in unacceptable adverse effects to ARNIs.

The new information received by EPA on May 22, 2024, included a new project description, changes intended as further impact avoidance and minimization efforts by SEG, and revisions to the original compensatory mitigation plan. The project is now described as a 67,832.63 square-foot (1.557 acres) fixed-dock marina with 127 slips of varying lengths (30-160'). This is a reduction from the originally proposed 1.69-acre design. Construction would require the installation of approximately 867 steel pilings (reduced from the originally proposed 1,333) and twenty-two (22) boat lifts along the west side of the lateral north pier closest to the shore to accommodate vessels up to 35 feet in length. Each slip would include a full-length dock finger to avoid the installation of mooring piles. Another design change is the use of grated decking and the elimination of a building previously proposed on the docks. The project now includes twelve (12) mooring buoys secured by auger-type anchors as well as seven (7) informational buoys to advise mariners to avoid shallow reefs and to avoid anchoring in areas of corals and seagrass. The existing rip-rap revetment along the southern shoreline of Coral Harbor would not be modified as previously proposed. Average water depths within the marina footprint would be approximately -12 feet, with depths ranging from -5ft to -18ft. The revised project would not require dredging at Coral Harbor, as previously proposed. In addition, SEG would no longer relocate seagrass beds out of the project footprint, as proposed in the original compensatory mitigation plan for the

project, but would still conduct annual debris clean ups at Coral Bay in addition to the relocation of both Endangered Species Act (ESA) listed and non-listed corals to nearby areas, plus the planting of approximately 300 red mangrove propagules along the shoreline to restore natural habitat lost due to hurricanes Irma and Maria in 2017.

As stated in our 2015 letter, EPA believes that the extensive sea grass meadows in Coral Bay are an ARNI because they serve as habitat for threatened and endangered species. Although the extent of sea grass has changed as a result of climate change and natural processes (such as the impacts from the 2017 hurricanes), colonization by the invasive sea vine *Halophila stipulacea,* and the accumulation of sargassum, the area still provides shelter, food, and foraging habitat for aquatic species, including commercially valuable fish stocks and corals. Recognizing the unique and rich environmental resources present at Coral Bay, the bay was designated by the National Oceanic and Atmospheric Administration (NOAA) as a priority site for the U.S. Coral Reef Task Force, resulting in major investments by NOAA and EPA to improve water quality though the performance of hydrological assessments, the stabilization of erosion-prone areas, and the reduction of sediment runoff from its watershed. These community-led efforts significantly improved water quality within Coral Bay.

To offset the impacts from the proposed marina, SEG has proposed a revised impact minimization and compensatory mitigation plan. One of the stated design changes to reduce impacts is the incorporation of grated decking to allow some light penetration, thus reducing shading impacts. However, the proposed docks are 10 to 16 feet wide and extend over approximately 0.5 acres of seagrass area in the bay. The combination of shading from the docks and the increased water turbidity due to marina construction, propwash, and marina operations may result in the loss of approximately 0.70 acres of seagrass. While these impacts may be reduced by using narrower docks, the applicant has stated that the proposed width of the docks is necessary to accommodate pedestrian traffic, maintenance and emergency vehicles, and to accommodate under-dock fuel, electricity, water distribution and sewage collection lines, as well as related infrastructure. In addition, at maximum capacity, vessels in the marina would cast shadows over 1.219 acres of sea grass, sea grass which may be completely lost due to the secondary effects of decreased light exposure. Additional impacts to the sea grass areas would occur due to spudding events during the proposed construction, resulting in an estimated loss of between 864 and 984 square feet of seagrass. While some of these impacts may be reduced through strict sediment and siltation controls and monitoring, SEG's consultant (Bioimpact Inc.) assumes that an additional 10% of seagrass loss may occur due to secondary effects of fill material discharge related to construction, and that propwash impacts from marina operations over time may account for an estimated total loss of 2.454 acres of sea grass due to secondary effects of fill material discharge, or more than a third of the seagrass area that would be occupied by the marina (approximately 6.8 acres). Although the applicant previously considered transplanting sea grass from the proposed marina footprint, this element of the mitigation plan was abandoned since the sea grass is desirable there, since it helps stabilize bottom sediments, thus helping to reduce water turbidity.

The applicant had originally proposed a derelict vessel and debris clean up at Coral Bay as part of its compensatory mitigation plan. However, after hurricanes Irma and Maria in 2017, additional boats sunk within the bay, and the U.S. Coast Guard as well as U.S. Virgin Islands Department of Planning and Natural Resources (DPNR) engaged in the cleanup and removal of vessels, eliminating this as a mitigation option. SEG still proposes to pick up smaller pieces of remaining vessels as well as other debris such as tires, trash cans, boards, tree limbs, and ropes. At a minimum, approximately 1,000

square feet of debris may be removed from the seagrass beds to allow for recolonization. SEG proposes to undertake this as a yearly activity. The applicant now also proposes out-of-kind mitigation to compensate for lost seagrass functions in the form of mangrove plantings along the shoreline to restore the mangrove fringe that was badly damaged by the 2017 hurricanes. Mangroves will be planted below the mean water line to provide the maximum habitat benefits. Approximately 300 red mangroves are proposed to be planted within an 850 linear foot area. EPA believes that these mitigation elements by themselves do not adequately compensate for the potential loss of seagrass that would result from the proposed project. Additionally, while off-site, out-of-kind mitigation is an acceptable form of compensatory mitigation under the 2008 Federal Mitigation Rule (Mitigation Rule), it is the least preferred option, as it is least likely to successfully replace lost functions and services associated with unavoidable project impacts.[1] While we commend the developers for their efforts to further minimize potential impacts since their original proposal, we continue to believe that the proposed mitigation efforts do not adequately compensate for the loss of ARNI functions.

In addition to sea grass impacts, EPA is concerned about impacts to corals from vessels entering the bay that may occur during marina operations. To minimize such impacts, SEG proposes the placement of informational buoys delineating the shallow hard bottom areas at the entrance of Coral Harbor as well as information signage on the dock advising mariners to avoid shallow reefs while in transit and to avoid anchoring in coral and seagrass areas. In addition, the marina management plan includes provisions for escort tenders to guide vessels in and out of the marina through the deepest part of the existing channel, the closure of the marina at night to reduce traffic in the dark, and the requirement that vessels radio in on approach to ensure that they have the channel coordinates for safe navigation. The applicant has also proposed to transplant four existing *Solenastrea bournoni* corals located near the proposed dock prior to any construction activities, as well as small *Siderastrea siderea* corals found on debris within the proposed marina footprint. The corals would be transplanted to an area similar to that of their current location south of Penn Point. SEG also proposes to outplant 3,000 ESA-listed corals into a nearby 1.84-acre area by working with Coral World, the University of the Virgin Islands and/or The Nature Conservancy, who are currently growing ESA-listed corals for outplanting projects. *Acropora palmata, Orbicella* and *Dendrogyra* corals would be the preferred species to outplant since these corals occur or did occur within the project area. They would be attached with two-part underwater epoxy. *Acropora palmata* fragments may be attached to concrete nails with tie-wraps depending on size.

The Mitigation Rule states that when evaluating the environmental preferability of mitigation options, the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project should be assessed. While we commend SEG for its efforts, EPA is concerned about the number of corals to be transplanted/outplanted, the source of such corals, and the success rate of these efforts. EPA is unaware of a project of this magnitude having demonstrated success in the Caribbean or elsewhere. No information regarding commitments to secure the proposed 3,000 corals has been presented, nor have the timeline or specifics for the outplantings been provided. EPA recommends that a comprehensive compensatory mitigation plan (CMP), including all elements required in 40 CFR § 230.94(c)(1)-(14), be submitted for review. The CMP should contain the agreements to obtain the corals to be transplanted as well as specific plans and specifications for the completion of the project, additional details regarding financial assurances and the appropriateness of a performance bond to ensure that the project is feasible and has the required elements to guarantee

project completion, and a comprehensive adaptive management plan so that adequate mitigation can be attained if the initial coral transplants/outplantings fail. This is of utmost importance given the potential for direct and indirect impacts to corals. Coral outplanting projects are both expensive and labor-intensive due to the amount of personnel and equipment required during extensive periods of time to maximize their success. Thoughtful planning and financial assurances are required to minimize the loss of the nursery-reared corals and to achieve the eventual success of any coral outplanting effort. In this case, it is of paramount importance given the magnitude of the proposed mitigation project.

In addition to our outstanding environmental concerns, EPA believes that the substantive modifications made to both the project and its proposed mitigation underscore the need for a renewed public participation process through the issuance of a new public notice. Public participation is an essential component of the Clean Water Act Section 404 permit evaluation process, giving the public an opportunity to submit comments, specify issues or concerns, and express support, opposition, and/or recommendations. Given the continued interest and concerns expressed by Coral Bay area residents, environmental organizations, and other stakeholders since the project's inception, EPA also urges the U.S. Army Corps of Engineers to consider holding public hearings for the project, which will allow all interested parties the opportunity to present additional input which may in turn lead to further impact reductions, project modifications, mitigation, or special permit conditions.

In summary, based on our review, EPA is concerned that the proposed project does not comply with the Guidelines and will result in unacceptable adverse impacts to ARNIs at Coral Bay. This opinion is based on the potential impacts to the expansive areas of sea grass and the significant modifications made to the project. Given the invaluable environmental resources present at Coral Bay, and recognizing the direct and indirect impacts that could result from the proposed activities despite project modifications, added to the unavailability of updated solid waste and wastewater estimates for the proposed marina vis-à-vis the compromised solid waste and wastewater disposal facilities within the U.S. Virgin Islands, EPA continues to recommend the denial of a Department of the Army permit for this project under the Section 404(q) MOA between our two agencies.

If you have any questions regarding this matter, please contact Mr. José M. Soto, of the Multimedia Permits and Compliance Branch, at (787) 977-5829, or by email at soto.jose@epa.gov.

Sincerely,

Lisa F. Garcia
Regional Administrator