UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUL 20 2000

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Ricardo Ramirez
Colon Ave. #2, Suite 1
Manati, Puerto Rico 00674

Dear Mr. Ramirez:

By letter dated April 6, 1999, you (Appellant) filed with the Secretary of Commerce a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for an Army Corps of Engineers permit to reconstruct a stilt house of 47' by 42'.

The CZMA provides that a timely objection by a state (including Puerto Rico) to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122. Generally, the Appellant has the burden of submitting evidence in support of his appeal and the burden of persuasion under both Grounds I and II.

The Federal regulations implementing the CZMA provide, in part, that the Secretary may dismiss an appeal for failure of the Appellant to base the appeal on Grounds I or II.

On September 16, 1999, you filed your initial brief and supporting information. The initial brief did not describe how your project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122. On April 26, 2000, this office sent you a final briefing letter and specifically stated that the final brief should address the criteria indicated in the initial briefing letter. Your final brief was due on June 26, 2000. This office received your final brief on June 29, 2000. Your final brief failed to address the criteria set forth in NOAA's regulations at 15 C.F.R. Part 930, Subpart H.

In light of your failure to describe the way in which your proposed activity is either 1) consistent with the objectives or purposes of the CZMA or 2) necessary in the interest of national security, I am dismissing your appeal. This is a final agency action for purposes of judicial review.

Sincerely,

Scott B. Gudes

cc: Josè R. Caballero-Mercado
Chairperson, PRPB
U.S. CoE, San Juan