



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

DEC 22 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Angel D. Rodríguez  
Chairman, Puerto Rico Planning Board  
Minillas Government Center, North Building  
De Diego Avenue Stop 22, P.O. Box 41119  
San Juan, Puerto Rico 00940-1119

Dear Mr. Rodríguez:

On October 31, 2003, Villa Marina Yacht Harbour, Inc. (Appellant) filed with the Secretary of Commerce (Secretary) a notice of appeal pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit for a marina expansion.

I have been delegated the responsibility for establishing initial and final briefing schedules for consistency appeals filed under section 307 of the CZMA. The Secretary has reserved the authority to make the findings in such appeals. See Department Organization Order 10-15 (January 26, 1996).

The CZMA provides that a timely objection by a state 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) pursuant to 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. The Appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion under both Grounds I and II. 15 C.F.R. § 130(d). Accordingly, we request that the parties brief the following issues:

1. Does the activity further the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner? 15 C.F.R. § 930.121(a).
2. Does the national interest furthered by the activity outweigh the activity's adverse coastal effects, when those effects are considered separately or cumulatively? 15 C.F.R. § 930.121(b). For the purposes of this appeal, the national interests to be balanced are limited to those recognized in or defined by the objectives or purposes of the CZMA.



3. Is there a reasonable alternative available that would permit the activity to be conducted in a manner consistent with enforceable policies of Puerto Rico's coastal zone management plan? When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to, considering previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal. 15 C.F.R. § 930.121©).

If Appellant wishes to raise Ground II, it should also provide information regarding whether the project is necessary in the interest of national security. The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity, which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. 15 C.F.R. § 930.122.

Appellant will have 35 days from receipt of this letter to file the brief and additional supporting information and data. The PRPB will have 35 days from the receipt of Appellant's brief to file its initial brief and any supporting information and data it chooses to include. The parties should mail their briefs and supporting information and data to Molly Holt, Attorney-Adviser, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East-West Highway, Room 6111, Silver Spring, Maryland 20910. We request that henceforth the parties send copies of all documents filed in the appeal to each other. Copies of all documents filed in this appeal must also be sent to:

Edwin E. Muñiz  
Chief, Regulatory Section  
U.S. Army Corps of Engineers  
400 Fernandez Juncos Avenue  
San Juan, Puerto Rico 00901-3299

Additionally, we request that the PRPB retain all nonconfidential documents sent or received in this appeal for public inspection during normal business hours. Copies of this information will also be available at the Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, at the above-listed address.

After the appellant perfects the appeal by filing a brief and supporting information and data, we will publish notices in the Federal Register and a local newspaper asking for public comments on the issues raised in the appeal and announcing the availability of the appeal materials for public inspection. We will also solicit the views of interested Federal agencies. The PRPB and Appellant will receive a copy of all comments received. Each party will have the opportunity to file a final reply brief before the record closes. The specific dates for comment periods and final briefs will be established after receipt of Appellant's initial brief.

The Department of Commerce prohibits its officials from engaging in ex parte contacts in connection with consistency appeals. However, the Office of Ocean and Coastal Resource

Management (OCRM) is available to assist the PRPB and Appellant with settlement negotiations. If settlement negotiations are initiated, either party may request that the appeal be stayed pending the outcome of the negotiations. Please call the Director, OCRM, at (301) 713-3155 for more information about settlement negotiations.

If you have any questions regarding the processing of this appeal, please contact Molly Holt at (301) 713-2967, extension 215.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Gleaves".

Karl Gleaves  
Assistant General Counsel  
for Ocean Services

cc: Eduardo J. Ferrer Ramirez De Arellano  
Attorney for Appellant  
Rose Ortiz, PRPBE  
Edwin Muñiz, ACOE



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Eduardo J. Ferrer Ramirez De Arellano  
P.O. Box 9020485  
San Juan, Puerto Rico 00902-0485

Dear Mr. Ramirez De Arellano:

On October 31, 2003, you filed with the Secretary of Commerce (Secretary) a notice of appeal on behalf of Villa Marina Yacht Harbour, Inc. (Appellant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. §§ 1451 et seq., and the Department of Commerce's implementing regulations, 15 C.F.R. Part 930, Subpart H. Accompanying your notice was also the appropriate application filing fee for the appeal. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit for a marina expansion.

I have been delegated the responsibility for establishing initial and final briefing schedules for consistency appeals filed under section 307 of the CZMA. The Secretary has reserved the authority to make the findings in such appeals. See Department Organization Order 10-15 (January 26, 1996).

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1. Does the activity further the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner? 15 C.F.R. § 930.121(a).
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If Appellant wishes to raise Ground II, it should also provide information regarding whether the project is necessary in the interest of national security. The term "necessary in the interest of national security" describes a Federal license or permit activity, or a Federal assistance activity, which, although inconsistent with a State's management program, is found by the Secretary to be permissible because a national defense or other national security interest would be significantly impaired if the activity were not permitted to go forward as proposed. 15 C.F.R. § 930.122.

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Sincerely,

Karl Gleaves  
Assistant General Counsel  
for Ocean Services

cc: Angel D. Rodríguez, PRPB  
Rose Ortiz, PRPB  
Edwin Muñiz, ACOE