COMMONWEALTH OF PUERTO RICO
OFFICE OF THE GOVERNOR
PUERTO RICO PLANNING BOARD

Minillas Governmental Center, North Bldg.
De Diego Ave, Stop 22
P. O. Box 41119, San Juan, P. R. 00940 - 1119

September 26, 2003

Mr. Eduardo Ferrer Ramírez
Villa Marina Yacht Harbour Inc.
PO Box 485
San Juan, Puerto Rico 00902

Federal Consistency Determination
CZ-2001-0529-117
JPA- 179
198800516(IP-VG)
Villa Marina Yacht Harbour Expansion
Sardinera, Fajardo

Dear Mr. Ferrer:

This letter is in response to your application for Certification of Consistency with the Puerto Rico Coastal Management Program (PRCMP) for the construction of a new marina as part of an expansion of the existing one. The project consists in the construction of 125 slips for medium size boats and the construction of a breakwater with dimensions of 398 feet long, 18 feet high, 35 feet wide in the bottom and 15 feet wide on the top. The project is located at Sardinera Bay, Sardinera Ward, Fajardo, Puerto Rico.

The application at reference was submitted in order to obtain U.S. Army Corps of Engineers permit for the above mentioned project. The review period began on March 5, 2003 when the application was considered complete. An extension of thirty (30) days for the review of this application was agreed on August 22, 2003.

The application and accompanying documents were sent to the Department of Natural and Environmental Resources (DNER), the State Historic Preservation Office (SHPO), the Council for the Conservation and Study of Underwater Archaeological Sites and Resources (CCSUASR), Fish & Wildlife Service (FWS), the Environmental Quality Board (EQB), the National Marine Fisheries Service (NMFS), and the Municipality of Fajardo. Public notices were also issued. A summary of the comments received from these agencies and the public in general follows:

DNER: this agency did not submit their comments during the granted period. Notwithstanding the PRPB sent them the most recent submitted information and a meeting was held on August 21, 2003 with the participation of representatives of the Puerto Rico Planning Board (PRPB) and the DNER in order to discuss the proposal. Finally, the DNER sent a letter dated september 3, 2003 (enclosure 1) in which they informed that this agency has notified the applicant in four occasions (letters dated November 23, 1999, August 31, 2000, February 27, 2001 and May 9, 2001) that the submitted information did not discussed their concerns about the project. Regarding the impacts on navigation, the DNER commented that they should wait for the Coast Guard comments and regarding the submitted studies (Bathimetric study, Wave Refraction and Defraction Study and Hidraulic Breakwater Stability Analysis) this agency informed that it were referred to the U.S. Army Corps of Engineers for their review and comments, so additional time will be required for the evaluation of these documents.

EQB: confirmed that the site consultation was filed by request of the applicant so they will not continue with the evaluation of the submitted environmental document.

FWS: during the evaluation of the proposed dredging for the existing inland marina this agency has expressed that they do not have records of endangered species. Notwithstanding theysent a letter later expressing concern for the potential impacts of the proposed Villa Marina and other proposed expansions on the endangered manatee. They strogly recommended to consider the cummulative impacts of the proposed marina expansions and new marina proposal at the area. (enclosure 2)

NMFS: this agency determined that the proposed expansion will not have significant impact on fishery resources at Sardinera Bay. There is no aquatic vegetation nor coral reefs within the project area.

SHPO: they informed that a Phase I study is required to complete the evaluation according to section 106 of the Historic Preservation Act.

Sea Grant: expressed no objection because they think that it is better to extend existing marinas than impact other virgin areas with higher ecological value.

Maternillo and Mansión del Sapo Fishermen Association: they submitted a letter with 99 signatures expressing objection to the proposal.

Mr. Frank D. Inserni expressed objection to the proposed marina expansion. He is concerned for the impacts that the proposed expansion will have in the water quality of the bay, marine ecology, boat traffic, and terretrial vehicle traffic. He recommended that the need for more boat slips shall be evaluated because Fajardo have four marinas for medium size boats and there are multiple boat parking lots that will satisfy the demand for this service.

Mr. Richard Vito (Sea Lovers Marina owner) expressed objection to the proposal. He is concerned about the impact that the proposed project will have in his approved marina expansion of 46 slips. He argues that his approved expansion is not being considered and that the project plans submitted by the applicant do not correspond to the real dimensions of the Sardinera Bay. The most recent submitted project plans and drawings did not contain the correct distances between the aproved Sea Lovers espansion and the new Villa Marina proposal. He expressed concerns about the restriction of space and increase in hazard to navigation because of the presence and location of the new breakwater and facilities among others. He also raised many issues related to the viability of the new breakwater.

The PRPB sent you a letter dated July 9, 2003 including the comments submitted by the agencies and the raised issues. You submitted a letter dated July 29, 2003 and three studies to answer the raised concerns.

The submitted studies were referred to the DNER for their review and comments. A letter was also sent to the U.S. Coast Guard to consult them about the aspects of navigation safety, but no response has been received until now.

After reviewing the submitted information and received comments the Puerto Rico Planning Board found that there remains many unresolved issues that are related with the PRCMP policies. These are the following:

The policy number 30.00, 30.01and 30.02 establishes:

30.0 To protect natural, environmental and cultural resources from destruction or irreparable damage resulting from misuse, or from lack of foresight to address the adverse impact of other activities.

30.01 Reduce the adverse impact of pollution on natural resources by identifying and controlling the causes and sources of said pollution.

30.02 Control the activities involving land development, construction, and land subdivisions which may adversely affect water quality...

In order to ensure the cosistency of the project at reference with these policies it is necessary to obtain the required compliance with the article 4c of the Environmental Policy Law (Law Number 9) because this is the mechanism established by the Puerto Rico Commonwealth for the evaluation and consideration of enviromental impacts. The PRCMP recognizes the Law Number 9 of June 18, 1970 as one of the means of exerting commonwealth control. (See apendix B of the PRCMP)

2- **The policy number 30.07 establishes: "Avoid the unnecessary loss, because of the introduction of new activities or the authorization of subdivisions, of future options in the use of resources, bearing in mind the following objectives:**

> **Avoid building structures in beach areas, discourage activities or land subdivisions in adjacent areas where they may impede or hinder free access to beaches; and encourage free enjoyment of panoramic views, free access to the sun and enjoyment of these areas by all the people.**

The submerged lands where Villa Marina expansion is proposed is a coastal resource that belongs to the Puerto Rico Commonwealth. It is part of a public space that is shared by Villa Marina Yacht Habor, the fishermen, Sea Lovers Marina, Puerto Chico Marina, Dos Marinas Tower residents and all the Puerto Rico people. Everybody have equal right to enjoy it. Villa Marina Expansion shall not have a significant impact on the public use of these waters and the existing activities. Therefore, a better justification in terms of public benefit shall be included within the documents for the evaluation of this proposal. The impacts on public use shall be carefully evaluated. The proposed expansion shall also be in harmony with the other existing marinas.

Therefore, pursuant to 15 CFR 930.63, the submitted information and based on the Federal Consistency Procedures with the PRCMP, the Puerto Rico Planning Board (PRPB) objects to your application for Consistency Certification.

In order to conduct the proposed activity in a manner consistent with the PRCMP you shall complete the following requirements:

1- The project plan shall be reviewed in order to include all the required information to evaluate the proposal and adress the issues raised by Mr. Richard Vito. The project Plan shall include the bathymetry of the area and the correct dimensions of the Sardinera Bay. We recommend you to consult with the USACE representatives about the information that is required to include in the drawings.

2- The Environmental document shall be reviewed in order to include the most recently submitted studies, address the pending issues and complete the DNER requirements for the completeness of the document.

3- You shall obtain the EQB endorsement about compliance with the Article 4c of the Environmental Policy Law. This process shall be completed within the review process of the DNER permit for Submerged Land Use Consession. The DNER shall be the proponent agency for this proposal. It is commendable to consult with the EQB representatives about this matter. The Puerto Rico Planning Board is in the best disposition to help you in coordinating a meeting with representatives of both agencies to receive an adequate orientation.

Pursuant to 15 CFR 930 subpart H you have the right to appeal the Planning Board Consistency objection by filing a Notice of appeal with the Secretary of the U.S. Department of Commerce within thirty days of receipt of this letter. Your appeal must be based on one or both of the grounds that the proposed activity (1) is consistent with the objectives or purposes of the Coastal Zone Management Act (15 CFR 930.121), or (2) is necessary in the interest of national security (15 CFR 930.122). Copy of the notice and supporting information must be sent to the Planning Board.

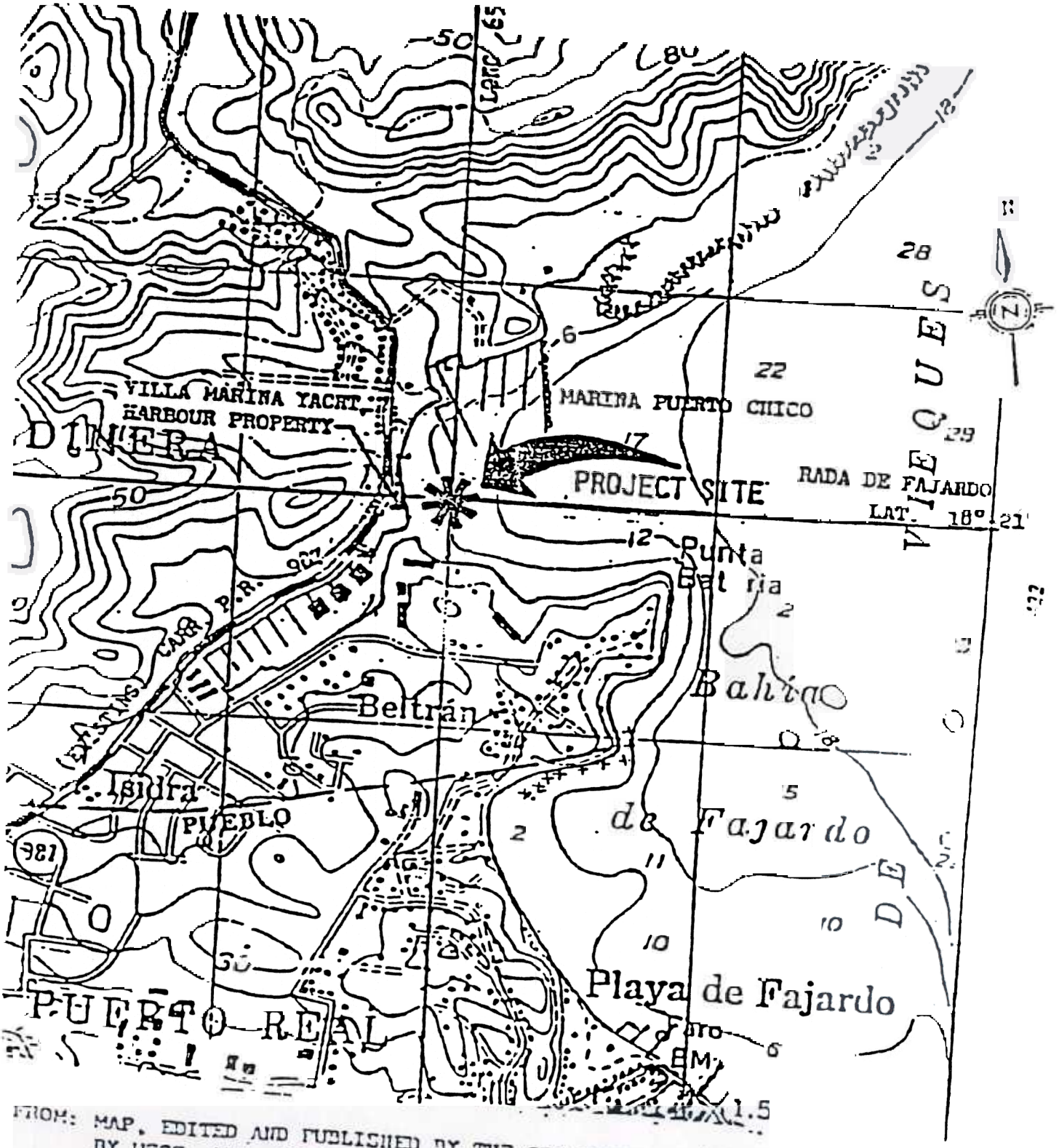
Sincerely,

Angel D. Rodríguez Quiñones
Chairman

Enclosure: Site plan
Letters

c Mr. Eldon Hout, OCRM, Maryland
Mr. Edwin Muñiz, USACE, San Juan
Mr. Ernesto Díaz, PRCMO, DNER, San Juan
Mr. Celso Rossy, DNER, San Juan
Mrs. Wanda García, EQB, San Juan

NAR/MML/RAO/mir



FROM: MAP, EDITED AND PUBLISHED BY THE GEOLOGICAL SURVEY CONTROL BY USGS AND NOS/NOAA-MAP EDITED 1982- — SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER

ON PLAN
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FEET

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AKWATER AND ADDITIONAL PIERS
FOR
MARINA YACHT HARBOUR

APPLICATION BY:
VILLA MARINA YACHT HARBOUR
AT PLAYA SARDINERA, BAHIA
FAJARDO, PUERTO RICO - DATE
Sheet No. 1.0

89IPG-20516

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2003 SEP 18 AM 10: 37
JUNTA PLANIFICACION
RADICADO
OFIC. SECRETARIO

CARMEN TORRES MELENDEZ
SECRETARIA
JUNTA DE PLANIFICACIÓN
PO BOX 41119
SAN JUAN PR 00940

Estimada señora Torres;

Expansión Villa Marina
"Yatch Harbour"
Playa Sardinera
Fajardo
CZ-2001-0529-117
Sol. Conjunta 179
ZMT-99-077

Mediante comunicaciones fechadas 23 de noviembre de 1999, 31 de agosto de 2000, 27 de febrero de 2001 y 9 de mayo de 2001, el Departamento de Recursos Naturales y Ambientales le notificó a la parte proponente que la información presentada hasta ese momento no discutía los señalamientos emitidos por esta agencia.

Posteriormente se han celebrado reuniones en las cuales se nos ha notificado que el "US Coast Guard" tiene gran interés en comentar sobre el canal de navegación que resultaría de la expansión de Villa Marina. Conforme a comentarios emitidos por la Comisionada de Navegación, el DRNA debe esperar por los informes técnicos que emita el USCG en lo relacionado a navegación.

Por lo que respecta a los tres estudios técnicos (Análisis Batimétrico para Villa Marina, Análisis de Refracción y Difracción de Olas para Villa Marina y Análisis de Estabilidad Hidráulica para el Rompeolas Propuesto), sometidos por la Junta de Planificación el día 14 de agosto de 2003, es necesario nos conceda tiempo adicional para comentar los mismos. Hemos procedido a referir los estudios a la consideración del Cuerpo de Ingenieros de los Estados Unidos, los cuales cuentan con el personal especializado.

Una vez recibamos los mismos procederemos a expresarnos.

Cordialmente,

Alberto M. Lázaro Castro
Subsecretario

AMLC/CRT/LNG/EJB/jf

E.L.A. DE P.R.
JUNTA DE PLANIFICACION
2003 SEP 23 A 9:30
FECHA ____ HORA ____

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Boqueron Field Office
P.O. Box 491
Boqueron, Puerto Rico 00622

September 25,2003

Ms. Carmen Torres Meléndez, Secretary
Puerto Rico Planning Board
Centro Gubernamental Minillas
P.O. Box 41119
San Juan, Puerto Rico 00940-1119

Re: CZ-2001-0529-117, Villa Marina
Playa Sardinera, Fajardo, expansion

Dear Secretary Torres:

The applicant is seeking Coastal Zone Consistency Certification for the expansion of an existing marina. Our office has been evaluating the expansion of this marina since 1999. The existing marina is an inland marina. The plan being proposed is seeking to expand the marina facilites through the construction of a pier and breakwater. The new piers would add 125 new slips to the marina, and the outermost pier would form part of the solid breakwater to protect the inner piers. The location of the pier and breakwater have been changed from previous designs to avoid conflicts with neighboring marina facilities.

In its prior review of the project the Service had recommended that a benthic survey be conducted. The application states that many studies have been made in Sardinera Bay that have concluded that there are no reefs, aquatic plants, or aquatic communities, these studies are referenced in a January 2001 letter to Mr. Henry Gutierrez. The applicant should supply a copy of at least one of the studies pertaining to the proposed area.

The Explanatory Memo states that proposed fueling facilities have been removed yet the enclosed drawing of the memo show a fuel dock at the entrance channel to Villa Marina. The memo also states that sewage pumpout facilities will be provided on the new pier, but the enclosed drawings do not indicate the location of these facilities. The discrepancies in the written memo and enclosed drawings should be clarified.

The Explanatory Memo indicates that the proposed pier would provide docking accommodations for 125 medium sized boats, however, the definition of a "medium boat" is not provided. As we have expressed in other letters to you concerning marinas, we are very concerned about the expansion of marinas in the eastern part of Puerto Rico and their potential impact on threatened and endangered species such as the Antillean manatee (*Trichechus manatus*) or their habitat.

As you know, boat collisions with manatees are the principal cause of manatee mortalities in Puerto Rico. Such mortality may count double when pregnant or nursing female manatees are killed by speeding boats, leaving orphaned calves that may not survive on their own. Since our estimate of manatees in Puerto Rico is close to 150 individuals, the death of one manatee may have a significant impact on the long term survival of this species. We believe that, given the current amount of wet slips and dry docks in the eastern part of Puerto Rico, applications for new marinas, dry docks, and marina expansions should evaluate the cumulative environmental impacts of all marinas in eastern Puerto Rico. The documents provided do not specify if boats smaller than 25 feet hull length will be allowed to dock at the proposed pier, nor what measures to protect manatees will be implemented to prevent collisions between manatees and boats using the pier and dock facilities.

During the past year, the two adjacent marinas, Sea Lover's and Marina Puerto Chico have both applied for expansions to their existing marinas. The Sea Lover's expansion would be completely dependent upon the Marina Puerto Chico expansions, since the latter would provide the breakwater protection needed. The proposed expansion of Villa Marina could conflict with the proposed expansion of Sea Lover's, and possibly with the expansion of Marina Puerto Chico. In terms of overall impacts (number of in-water structures, number of additional boats, need for additional breakwaters), the Villa Marina expansion appears to be the least impacting. Nevertheless, there is definitely a conflict in use of subtidal waters between these projects, and this would appear to be a Planning Board or DNER issue which needs resolution if any of these expansions are to take place. We strongly recommend that both the Planning Board and the Corps consider cumulative impacts to the area from the proposed marina expansions.

To summarize, the Service continues to have concerns for potential impacts to manatees and subtidal habitats from the proposed expansions of this and other marinas in the Playa Sardinera area, therefore, we recommend that Coastal Zone Consistency certification not be given to this proposed expansion until these concerns have been resolved.

Thank you for the opportunity to comment on this action, and please do not hesitate to contact Dr. Jorge E. Saliva or Mr. Félix López from our staff at 787/851-7297 extensions 24 and 26, respectively, should you have any questions concerning our comments.

Sincerely yours,

Carlos A Díaz
Assistant Field Supervisor

jes/fhl
cc:
DNER, San Juan
COE, San Juan
EPA, San Juan
EQB, San Juan