



JUN 04 2004

MEMORANDUM FOR: Dr. William T. Hogarth
Assistant Administrator for Fisheries

FROM: John J. Kelly, Jr. 
Deputy Under Secretary for
Oceans and Atmosphere

SUBJECT: Request for Comments -- Villa Marina Yacht Harbour, Inc.
Consistency Appeal

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 to expand an existing marina. This project is located in Sardinera Bay, Sardinera Ward, Fajardo, Puerto Rico.

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 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 the proposed project satisfies the requirements of 15 C.F.R. § 930.121 or § 930.122.

The Appellant requests the Secretary override PRPB's consistency objections based on Ground I. To make the determination the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find: (1) the proposed activity furthers the national interest as articulated in Section 302 or 303 of the CZMA in a significant or substantial manner, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively, and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of PRPB's coastal zone management plan.
See 15 C.F.R. § 930.121.



I have been delegated the responsibility for soliciting comments from federal agencies on this appeal. I am requesting your views on any or all of the above elements to be considered by the Secretary. So this appeal may be completed in a timely manner, I respectfully request you submit your comments within 30 days of the date of this letter. Please mail the comments to Molly Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Suite 6111, Silver Spring, Maryland 20910.

If you need any additional information in order to comment on this appeal, please contact Ms. Holt at (301) 713-2967, extension 215.

cc: Joseph Powers, PR Regional Director
Thomas Bigford, F/HP
Laurie Allen, F/PR



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

JUN 04 2004

The Honorable Michael O. Leavitt
Administrator, Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue
Washington, D.C. 20460

Dear Administrator Leavitt:

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 to expand an existing marina. This project is located in Sardinera Bay, Sardinera Ward, Fajardo, Puerto Rico.

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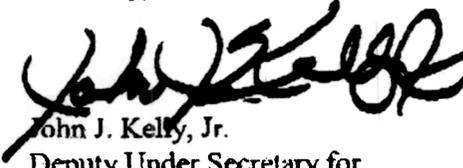
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Sincerely,

A handwritten signature in black ink, appearing to read "John J. Kelly, Jr.", written in a cursive style.

John J. Kelly, Jr.
Deputy Under Secretary for
Oceans and Atmosphere

cc: Director, Office of Federal Activities



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

JUN 04 2004

Mr. Steven Williams
Director, U.S. Fish and
Wildlife Service
Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Dear Mr. Williams:

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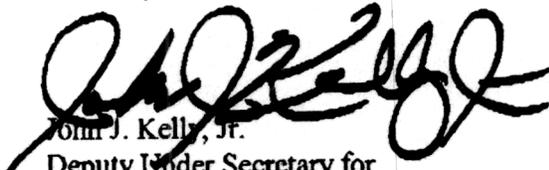
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Deputy Under Secretary for
Oceans and Atmosphere



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

JUN 04 2004

Lieutenant General Robert B. Flowers
Chief of Engineers
2600 Army Pentagon
Washington, D.C. 20310-2600

Dear General Flowers

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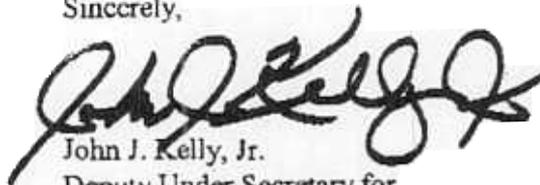
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