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Colonel Alan M. Dodd
District Commander
Jacksonville District
United States Army Corps of Engineers
701 San Marco Boulevard
Jacksonville, FL 32207

Via Certified Mail/Return Receipt Requested
and Via Email alan.m.dodd@usace.army.mil

Subject: Lido Key Beach Renourishment Project

Dear Colonel Dodd:

We understand that the United States Army Corps of Engineers ("the Corps") may be in the process of making a decision regarding the proposed Sarasota County, Florida Hurricane and Storm Damage Reduction Project (Lido Key) (hereinafter "Lido Key Beach Renourishment Project" or "the Project").

On behalf of SOSS2, Suncoast Waterkeeper, Rich Schineller, Maria Bankemper, Peter van Roekens and Mike Lepore, we would like to express our concerns and questions regarding the Project's compliance with, inter alia, the National Environmental Policy Act ("NEPA"), Section 404 of the Clean Water Act ("Section 404"), the Endangered Species Act, and the Water Resources Development Act of 1999 ("the WRDA").

We ask that the Corps respond to questions posed in this letter prior to making any decisions regarding the Project. In addition, if the Corps declines to take the actions requested in this letter, we ask that the Corps provide the groups and individuals listed herein with a written explanation as to why the Corps has declined each of our specific requests.

We understand that the Corps may soon be releasing further studies and scheduling further meetings and hearings concerning the Project. Please include me on the "release" list for any studies and on the notice list for any meetings and hearings. I can be reached via email at dhemke@cfjblaw.com.

Prior to addressing specific issues concerning NEPA, Section 404, the WRDA, and other federal statutes, I would like to emphasize that we do not oppose renourishment at Lido Key, but we insist that any renourishment does not jeopardize Siesta Key in any way or impair navigation and that alternatives to obtaining sand from Big Pass be appropriately explored and used.

NEPA

NEPA requires that an agency critically examine the environmental impacts of and alternatives to any federal action "significantly affecting the quality of the human environment" and to study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. See, e.g., Vermont Yankee Nuclear Power v. NRDC, 435 U.S. 519, 551 (1978); see also Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989); Wilderness Watch & Pub. Emps. for Env'tl. Responsibility v. Mainella, 375 F.3d 1085, 1094 (11th Cir. 2004). NEPA's procedural requirements must be followed faithfully. New Mexico ex rel. Richardson v. Bureau of Land Management, 565 F.3d 683, 703-04 (10th Cir. 2009). These include taking a "hard look" at the proposed action's direct and cumulative impacts and rigorously exploring all reasonable alternatives. We request written discussion of the Corps' analysis of all reasonable alternatives, including the alternative of utilizing sand from the seven FDEP permitted sand sources specifically designated for Lido Beach nourishment.

We understand, based on the Corps' public statements, that the Corps may be planning to use the 2002 Sarasota County Florida Hurricane and Storm Damage Reduction Project (Lido Beach) Environmental Assessment ("EA"), as the NEPA analysis for the Project. This EA is, as explained below, a legally inappropriate analysis for the Project. Instead, to comply with NEPA, the Corps should prepare an environmental assessment ("EA") and, ultimately, an environmental impact statement ("EIS") concerning the Project as presently being considered with obtaining the renourishment sand from Big Pass, rather than from the offshore sites which were considered in the 2002 environmental assessment.

1. An EIS, not just an EA, is appropriate for the Project, given the Project's size, the Project's 50-year duration, the Project's potential impacts, the Project's proximity to Siesta Key, one of premier, if not the premier, beach in the United States, and the controversy concerning the Project's environmental impacts. If a "major federal action" is or may be likely to "significantly affect . . . the quality of the human environment," an EIS is required. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1508.9. An EA is only appropriate if the project has no significant impact. 40 C.F.R. §§ 1501.4, 1508.9, 1508.13. The Project has the potential to create major negative impacts for navigation as well as negatively impact the shoreline and beaches of Siesta Key and South Lido Park. The proposed groins will have a negative impact on South Lido Park and will cause irreparable harm to this popular recreation area. Additionally, Siesta Beach is

naturally nourished as a part of a closed littoral cell of which Big Pass is an integral part. Siesta Key Beach has been named as the number one beach in the country and contributes about one third of the County's Tourist Development Tax revenues. The Project, as presently being considered with renourishment sand to be obtained from Big Pass, threatens to harm the quality and integrity of Siesta Key Beach, which would have a profound impact on the region.

In examining the actual results vs. the predicted results of dredged inlets in the area, (Johns Pass, Longboat Pass, New Pass and Stump Pass), it has been shown that shallow water conditions follow the dredging, and it is not uncommon to have five years or more where controlling depths are less than four feet. Contrast this with Big Pass and Redfish Pass which have never been dredged and have controlling depths of 5.5 feet to 6 feet. There are significant marine interests that depend on Big Pass being navigable, beyond skiffs with outboards. The proposed groins will have a negative impact on South Lido Park and will cause irreparable harm to this public beach. Without exception, the published coastal technical papers and professional studies have found that rock groins create downdrift erosion. The Project proposes to mitigate downdrift erosion through a constant and predictable re-nourishment schedule. However, that schedule is dependent upon consistent and reliable Federal funding that is impossible to guarantee. Also, it assumes that no major storms will impact the project area to the extent that the groins will be exposed to wave action. Again, this assumption is not supported by a review of recent storm activity in the area.

These impacts are highly significant, constitute an irreversible and irretrievable commitment of resources, and require an EIS. Neither the 2002 EA nor the 2002 "Finding of No Significant Impact" addresses these issues and thus should not be relied upon.

Such an EIS should assess the predicted impacts of the Project on all aspects of the environment, including indirect and cumulative impacts, the impacts of all connected and cumulative actions, and an analysis of all reasonable alternatives to dredging from Big Pass and their impacts. 42 U.S.C. § 4332(2)(C); 40 C.F.R. pt. 1502 & §§ 1508.11, 1508.25(c). The 2002 EA fails to do this.

2. The 2002 EA, even when considered with the 2004 Update, is ten years old, out of date, and should be either replaced or supplemented. Even if the Corps refuses to conduct an EIS, it must supplement the 2002/2004 EA in order to comply with NEPA. Under NEPA, supplemental analysis is required when "there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts" or "the agency makes substantial changes in the proposed action that are relevant to environmental concerns." 40 C.F.R. § 1502.9(c)(1)(ii). The significant new circumstances or information include the following:

- Additional federal authorizations, if any.

- Changing the proposed borrow areas from three offshore sites to Big Pass, which would be highly environmentally controversial concerning the impacts on Siesta Key. See, e.g., 40 C.F.R. § 1508.27(b)(4).
- Changes in Florida coastal management policy, goals, or regulations over the last ten years that would apply to or could affect the project area.
- Changes in state, county or city policy, goals, or regulations that would apply to or could affect the project area. Such changes would include, but are not limited to, the 2008 Sarasota County Inlet Management Plan, the 2008 FDEP Strategic Beach Management Plan, the Sarasota County Comprehensive Plan, and the Sarasota City Environmental Protection and Coastal Islands Plan.
- New information regarding the project area. This would include shoreline change data for the years since 1999; the Corps' 2008 study, *Application of Regional Sediment management Techniques at New Pass and Big Sarasota Pass, Florida*, by Steven M. Bratos, MSCE and Jason A. Engle, MSCE; the 2008 report, *Regional Model for Sarasota Bay and Case Studies of Longboat Pass and Venice Inlet* by Humiston & Moore Engineers, the 2006 *Topographic and Bathymetric Survey Report* by Coastal Engineering Consultants, the 2007 *Sediments of New Pass and Big Pass* by the University of South Florida, the 2007 *Current Measurements at Big Sarasota Pass and New Pass* by Davis, Beck and Ping, *Morphodynamics of Big Sarasota Pass*, the 2007 *New Pass Elucidated From Time Series Aerial Photos* by Davis, Beck and Ping, the 2007 *Erosion Analysis Report* by Coastal Engineering Consultants. All of these reports and studies were published after the 2004 EA update and are not cited.

In addition, as was noted above, there are significant changes in the Project itself since 2004, such as obtaining the renourishment sand from offshore, that would require a supplemental NEPA analysis. See DuBois v. United States Department of Agriculture, 102 F.3d 1273, 1291-92 (1st Cir. 1996); Environmental Defense Fund v. Marsh, 651 F.2d 983, 992-94 (5th Cir. 1981). There have been, or will be, changes from the original Corps' project which require a supplemental EIS because they reconfigured the project and would impact new areas. Environmental Defense Fund, supra, 651 F.2d at 992-994.

Section 404

Section 404 prohibits the discharge of dredged or fill material into navigable waters except in compliance with a Corps permit issued under Section 404, 33 U.S.C. § 1344. See 33 U.S.C. § 1311(a). Pursuant to the 404(b)(1) Guidelines, see 33 U.S.C. § 1344(b)(1); 40 C.F.R. Part 230, the Army Corps should only issue a Section 404 permit

when the proposed project: (1) is the least environmentally damaging practicable alternative (the "LEDPA") to meet the project purpose; (2) will not violate other environmental standards, including applicable water quality standards; (3) avoids impacts to specially protected species or aquatic sites; and (4) adequately minimizes and compensates for unavoidable wetland and other aquatic resource losses. See 40 C.F.R. § 230.10(a)–(d). The Section 404 permitting process is particularly focused on avoiding and minimizing impacts to special aquatic sites. See 40 C.F.R. §230.10. Special aquatic sites are "geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region." 40 C.F.R. § 230.03 (q-1). In light of its designation as an Outstanding Florida Water, Big Pass should be considered a special aquatic site, as may be other possibly affected areas.

The 404(b) analysis included in Appendix 1 of the 2002 EA does not meet the CWA's standard. The 404(b) analysis is inadequate in light of the twelve years that have passed since its drafting, its failure to address impacts to Big Pass as a special aquatic area, and its failure to demonstrate that the Project is the LEDPA. We ask that it be redone to address these points.

Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Marine Mammal Protection Act

Consultations with the Fish and Wildlife Service and National Marine Fisheries Service are required in order to comply with Section 7 of the Endangered Species Act (regarding effects to threatened and endangered species), the Magnuson-Stevens Fishery Conservation and Management Act (regarding impacts to Essential Fish Habitat), and the Marine Mammal Protection Act (regarding effects to marine mammals). Given the twelve years and numerous changed circumstances that have passed since the Corps' consultations with these agencies, these consultations must be re-initiated in order to fully comply with these federal statutes.

Water Resources Development Act of 1999

As acknowledged in the 2002/2004 EA, the current project is significantly different than the project authorized by Section 364(2) of the WRDA of 1999 and exceeds the maximum project cost allowed by Section 902 of the WRDA of 1999. Please explain the consistency of the Project with the WRDA, and please explain if there has been any additional Congressional action, and, if not, why further Congressional authorization is not required prior to any Corps action on the Project.

Conclusion

In summary, we note that these are only preliminary comments and questions and we reserve the right to comment further. It appears that there is a lack of cooperation and understanding between and amongst the various agencies, stakeholders and the public concerning the project purpose, scope, potential impacts and alternatives. In light of the significant concerns and questions raised in this letter we believe that a thorough evaluation of this costly project is required, with adequate public and agency input, particularly analyzing those alternatives which would avoid obtaining renourishment sand from Big Pass.

Accordingly, we ask the Corps to hold a formal public hearing on this matter, in which Sarasota citizens can ask the Corps questions and receive answers and make public comments. We also, as explained above, request that an EIS be prepared in accordance with NEPA.

Should you have any questions, I can be reached via telephone 813-229-4101 or via email at dhemke@cfjblaw.com.

Very truly yours,

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Donald E. Hemke

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