



UNITED FOR A HEALTHY GULF

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February 6, 2007

Ed Sarfert
Regulatory Division
Department of the Army
Jacksonville District Corps of Engineers
Pensacola Regulatory Office
41 North Jefferson Street, Suite 111
Pensacola, FL 32502

**RE: Permit Application No. SAJ-2006-0062-IP-EPS;
Applicant: Secret Promise, Ltd (Dr. J. Crayton Pruitt, owner)**

Dear Mr.Sarfert:

I am writing on behalf of the Gulf Restoration Network (GRN), a network of over 50 local, regional, and national environmental and public interest groups dedicated to uniting and empowering people to protect and restore the natural resources of the Gulf Region. We submit these comment in response to an application for a permit, pursuant to Section 404 of the Clean Water Act (33 U.S.C. Section 1344), submitted to the U.S. Army Corps of Engineers (hereinafter "the Corps") by Secret Promise, Ltd (hereinafter "the Applicant"). The applicant seeks a permit to construct commercial, residential, and marina development just east of Dekle Beach, in Taylor County, Florida. The proposed development would destroy 37 acres of salt marsh, and approximately 36 acres of seagrass in the nearshore environment and 100.81 acres of wetlands in the onshore environment. The GRN opposes the issuance of the requested permit for the following reasons:

I. FAILURE TO AVOID AND MINIMIZE WETLAND IMPACTS

Pursuant to Section 404 of the Clean Water Act, the Corps is charged with protection of wetlands from unnecessary destruction or degradation. Based on preliminary data supplied by the applicant **approximately 66 acres of forested and herbaceous wetlands, 37 acres of salt marsh, and 36 acres of seagrass would be directly impacted** by construct the proposed project. The project area is an area of high quality wetlands in one of Florida's most undisturbed, environmentally sensitive areas. (*See*, Florida Fish and Wildlife Commission, Preliminary Assessment of Proposed Permit, EEP Application No. O5-0618, June 6, 2006 (hereinafter "FFWC Assessment"). The

proposed project would create relatively high density development in this area. No significant attempt appears to have been made by the applicant to minimize potential adverse impacts of the proposed development on wetlands. The Corps must make every effort to ensure that the applicant avoids and minimizes the loss of forested, herbaceous, and estuarine wetlands associated with the proposed development. .

II. ISSUANCE OF THE PERMIT WOULD VIOLATE 404(B)(1) GUIDELINES AND BE CONTRARY TO THE PUBLIC INTEREST

In determining whether or not to issue the requested permit, the Corps states that it will consider the probable impact of the proposed activity on the public interest. Additionally, the section 404(b) (1) guidelines, 40 C.F.R. Part 230.10 (c) requires that in issuing a section 404 permit the Corps' ensure that:

- (c) [N]o discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. . . . Under these Guidelines, effects contributing to significant degradation, considered individually or collectively, include:
- (1) Significantly adverse effects of the discharge of pollutants on human health or welfare, including but not limited to effects on municipal water supplies, plankton, fish, shellfish, wildlife, and special aquatic sites.
 - (2) Significantly adverse effects of the discharge of pollutants on life stages of aquatic life and other wildlife dependent on aquatic ecosystems
 - (3) Significantly adverse effects of the discharge of pollutants on aquatic ecosystem diversity, productivity, and stability. Such effects may include, but are not limited to, loss of fish and wildlife habitat or loss of the capacity of a wetlands to assimilate nutrients, purify water, or reduce wave energy; or
 - (4) Significantly adverse effects of discharge of pollutants on recreational, aesthetic, and economic values.

Within its preliminary assessment of the project the staff of the Florida Fish and Wildlife Commission (hereinafter FFWC) determined that numerous impacts from the proposed development were contrary to the public interest of the citizens of Florida. Interestingly, these findings also reveal that issuance of the permit by the Corps would be contrary to the provisions of 40 C.F.R. Part 230.10(c) Pertinent findings by FFWC staff include:

- Potential negative impacts to bay scallops due to loss of seagrass habitat;
- Degradation of seagrasses due to
 - ♦ increased boat traffic, particularly damage associated with propeller scarring;
 - ♦ nutrient loading associated with storm water and other runoff;

- ♦ construction of seawalls, bulkheads, and riprap which refract energy away from shore and cause erosion and increased currents that harm seagrass.
- Reduction in the value of the project area, particularly the Big Bend Seagrasses Aquatic Preserve, as a nursery area for finfish and shellfish, as well as a forage area for fish, shellfish, manatee, osprey, bald eagles, sea turtles, sturgeon and dolphins;
- Likely adverse effects on recreational values, due to interference with existing state recreational trails;
- Adverse effects on the conservation of wildlife and their habitats;
- Adverse affects on fishing and marine productivity and potential displacement of members of the commercial fishing industry in the county and region; and
- Degradation of the state's designated use of the area (scallop production/fishing), contrary to the State's anti-degradation policy.

See generally, FFWC Assessment attached hereto and incorporated herein by reference. In short, the FFWC Assessment establishes that the discharge of dredged or fill material requested by the applicant would "cause or contribute to significant degradation of the waters of the United states" contrary to the provisions of 40 C.F.R. Part 230.10(c) cited above. Issuance of the permit would be contrary to the public interest. The Corps must, therefore, deny the applicants request for a permit.

III. ENDANGERED SPECIES

Within its notice, the Corps lists the following listed species as potentially impacted by the proposed project: West Indian Manatee, Gulf sturgeon, leatherback, hawksbill, loggerhead, Atlantic green and Kemps' ridley turtles, and the bald eagle. The Corps list is incomplete and, therefore, fails to reveal the full extent of the possible impacts on listed species. For example, federally listed endangered or threatened species that have been seen within the vicinity of the project area include the shortnose sturgeon (endangered), peregrine falcon (endangered), wood stork (endangered), and red-cockaded woodpecker (endangered); Additionally, not referenced by the Corps, but important nonetheless, are state listed species observed in the project area or which may occur within a half-mile of the project site. These include: the Florida black bear (threatened); piping plover (threatened); roseate spoonbill, white ibis, reddish egret, little blue heron, tricolored heron, Brown pelican, American oystercatcher, and gopher tortoise (species of special concern). (*See Florida Fish and Wildlife Conservation Commission Staff Preliminary Project Assessment, ERP Application 05-0618, June 6, 2006, p. 14*). The Corps must formally consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service with regard to potential impacts on all federally listed species that may occur in project area. Additionally, the Corps should seek input from appropriate state agencies to ensure that potential impacts to state listed species are identified and addressed.

IV. MITIGATION

It is evident that, even with required efforts to avoid and minimize wetlands destruction, construction of the proposed project will impact significant wetland acreage. The mitigation proposed by the applicant includes:

- establishment of two seagrass protection zones of approximately 6.8 acres each, to allow for re-establishment in areas of severe propeller scarring;
- creation of 10 acres of salt-marsh and preservation of 126.44 existing acres of salt marsh located north-north west of the proposed site;
- enhancement of 148.8 existing acres of wetland located northeast of the proposed site.

With regard to the type of mitigation proposed for the loss of 35.71 acres of seagrass, the mitigation proposed is passive, involving long term improvements in water quality (through municipal sewage upgrades and the like, and reductions in other secondary impacts of the development). The success of this type of passive mitigation is dubious; often being dependent upon successful action by local governments or other third parties, and thus is not acceptable. (See Florida Fish and Wildlife Conservation Commission Staff Preliminary Project Assessment, ERP Application 05-0618, June 6, 2006, p. 10-11). Moreover, even were we to assume that the proposed mitigation would be successful, the 13.4 acres does not fully compensation for the loss of 35.71 acres of seagrass – leaving a net loss of over 22 acres of seagrass.

The proposed mitigation to offset the loss of 37 acres saltmarsh is similarly lacking. First, pursuant to Corps of Engineers regulations, preservation of existing wetlands types is not a preferred form of mitigation since it does not directly offset the loss of wetlands, contrary to the governments no net loss policy. Additionally, the amount of mitigation offered does not even satisfy a 1:1 ratio. Only 10 acres of created salt marsh is offered to offset the loss of 37, leaving a net loss of saltmarsh of 27 acres. *Id.*

The applicant proposes to “enhance 148.8 acres of existing wetlands” in mitigation for destruction of 100.81 acres of forested and herbaceous wetlands. We are at a loss as to how the applicant proposes to enhance virtually pristine wetlands. We can only assume that by “enhanced” the applicant mean he intends to preserve these wetlands in perpetuity. As previously stated, preservation is not a preferred method of mitigation as it will not offset the net-loss of wetlands associated with this project.

In short, the applicant’s proposed mitigation falls well short of what must be required should the Corps determine that issuance of this permit is appropriate. If mitigation does take place, the amount of acreage must significantly exceed a 1:1 ratio for acreage destroyed, as the eventuality of at least partial failure must be taken into account. Also, the amount of acreage required must fully replace the function and values (local flood mitigation, local flora/fauna, etc.) that this large tract of wetland currently performs. Furthermore, any mitigation plan must be reviewed and approved by all interested federal agencies (i.e., U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration, and U.S. Fish and Wildlife Service) and state agencies (i.e., Florida Fish and Wildlife Conservation Commission) prior to issuance of the permit.

V. THE MITIGATION PLAN SHOULD BE MADE AVAILABLE FOR PUBLIC REVIEW

The current Public Notice system is not adequate to fully involve the public in the Section 404 permitting process. The only item available to the public in the entire process is the initial Public Notice, which occurs before the Corps and the applicant go through the “avoid, minimize, and mitigate” process. Therefore, the public is not being afforded the opportunity to comment on the final project, including the mitigation plan. We request that the public be given an opportunity to review and comment on any mitigation plan developed by the Corps with regard to this application prior to issuance of the permit.

VI. AN ENVIRONMENTAL IMPACT STATEMENT (EIS) IS REQUIRED.

Review of the proposed project and its impact on the environment set forth within the Corps’ notice makes clear that the construction of the proposed development would have significant impacts, both singularly and cumulatively, on the human environment. Consequently, the completion of an environmental assessment in this instance will not suffice. The Corps must complete a comprehensive environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. Sections 4331 et seq., before issuance of the permit. In completing an EIS the Corps cannot limit its consideration of impacts to those associated with the proposed development, but must also analyze impacts associated any and all foreseeable residential and industrial development on the contiguous acreage owned by the applicant, as well as other undeveloped properties in the area, any infrastructure associated with foreseeable development, and any other reasonably foreseeable impacts that will flow from urbanization of this largely rural region. The analysis of impacts must include, but should not be limited to, the following:

Direct Impacts

- (i) degradation of water quality associated with all aspects of the proposed development, such as impacts associated with reduction in pollutant filtration, increases in polluted runoff associated with increases in impermeable surfaces, turbidity associated with dredging of the proposed channel and disposal of dredge spoil, and pollutant discharges associated with an increase in boat traffic and the operation of one or more marinas;
- (ii) degradation and/or destruction of seagrass due to
 - o increased boat traffic, particularly damage associated with propeller scarring;
 - o nutrient loading associated with increases in impermeable surface, storm water, and the like; and
 - o construction of seawalls, bulkheads, and riprap which refract energy away from shore and cause erosion and increased currents that harm seagrasses.
- (iii) degradation or destruction of all types of wetland habitat, including but not limited to impacts on the value of the area as nurseries for finfish and shellfish, as

- well as a forage area for fish, shellfish, manatee, osprey, bald eagles, sea turtles, sturgeon and dolphins;
- (iv) reduction in the recreational value of the area, including but not limited to recreational fishing, recreational boating, including kayaking, and other existing recreational uses of the area;
 - (v) impacts to federally listed threatened and endangered species and to state listed threatened and endangered species and species of special concern or their habitat;
 - (vi) the effect of the project on state and federal agency efforts to rebuild overfished fisheries, including but not limited to gag grouper, red grouper, and red snapper.
 - (vii) reduction or other impacts on marine productivity and the potential for displacement of members of the commercial fishing industry in the county and region as a result;
 - (viii) impacts on nesting or migrating shorebird and their habitat;
 - (ix) effects of the project on the state's designated use of the area for scallop production and harvesting, contrary to the State's anti-degradation policy;
 - (x) any and all impacts to the Big Bend Seagrasses Aquatic Preserve;
 - (xi) any potential impacts of the proposed development on local aquifers and other sources of fresh water for human populations and wildlife.
 - (xii) increases in storm hazard and resulting increases in human population and the level of insured properties along the coastline of this area;
 - (xiii) impacts on other parcels of developed and undeveloped land in the vicinity of the proposed project, including but not limited to increases in runoff to adjacent properties, potential effects on ingress and egress from adjacent properties, and potential increases in flooding and other storm impacts associated with the loss of wetlands and other natural features of the project area that function as floodwater sinks or storm buffers;
 - (xiv) impacts of the proposed high density development on existing ecotourism and other industries reliant on wildlife resources and fisheries

Secondary or Indirect Impacts

- (i) any and all impacts of increased residential or commercial development stimulated by the proposed project on wetlands or other aquatic resources, levels of storm water or runoff entering local water bodies, traffic patterns or the level of traffic on local roadways, local waste water treatment capacity or other infrastructure;
- (ii) any and all impacts of increased residential or commercial development stimulated by the proposed project on existing ecotourism and other industries reliant on wildlife resources and fisheries;
- (iii) any and all impacts of increased residential or commercial development of development stimulated by the proposed project on local aquifers and other sources of fresh water for human populations and wildlife alike;
- (iv) any other environmental impacts associated with residential and commercial development stimulated by the proposed project.

Cumulative Impacts

A cumulative impact is “the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.” Fritiofson v. Alexander, 772 F.2d 1225, 1245 (5th Cir. 1985) (emphasis added). Within the EIS the Corps must fully analyze the impacts of all past, present and reasonably foreseeable development or activities stimulated by the proposed project that have had or are expected to have impacts in the project area and the surrounding area, and the overall impact that can be expected if the individual impacts are allowed to accumulate. An action may be significant in its own right or it may be significant if “the action is related to other actions with individually insignificant but cumulatively significant impact.

In this instance, the Corps’ analysis of cumulative impacts must include the potential for the project to stimulate significant urban growth in Taylor County – currently a very rural area – and the cumulative effect of all foreseeable environmental consequences of that development on one of Florida’s most undisturbed, environmentally sensitive coastal areas and a state owned seagrass preserve (the Big Bend Seagrasses Preserve).

VII. INCORPORATION OF ANALYSES AND COMMENTS

Comprehensive analyses of the proposed development and its impact have been completed by state agencies and organizations having greater expertise than the GRN on issues of specific concern to us. Several of these organizations and agencies will be submitting comments on this permit application. We are attaching hereto and incorporate herein by reference the Florida Fish and Wildlife Commission, Preliminary Assessment of Proposed Permit, EEP Application No. O5-0618, June 6, 2006. We also incorporate by reference any and all comments on this proposed development/permit submitted to the Corps by the Florida Fish and Wildlife Commission, the Suwannee River Water Management District, 1000 Friends of Florida, the Florida Clean Water Network, the Gulf of Mexico Regional Fishery Management Council, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

Respectfully submitted,

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Executive Director
Gulf Restoration Network