



3333 Sanibel Captiva Road, Sanibel Island Florida 33957
Telephone 239.472.2329

March 24, 2009

Mr. Mark Sramek
National Marine Fisheries Service, HCD
263 13th Avenue South
St. Petersburg, FL 33701

RE: Permit Application # SAJ-2003-12117 (IP-TWM)

Dear Mr. Sramek:

This letter is submitted on behalf of the Sanibel Captiva Conservation Foundation (SCCF) in objection to the Plantation Development Ltd. and Mariner Group Inc. project known as Harbour Pointe at South Seas Resort, SAJ-2003-12117IP-TWM.

The project proposes to eliminate 2.61 acres of black mangrove basin forest wetlands for construction of 24 large, luxury home sites and pool/spa amenity located adjacent to the Outstanding Florida Waters of Pine Island Sound Aquatic Preserve. Our objection to this project is based on the fact that it does not meet the standard for avoidance and minimization of wetland impacts, is not water dependant, will impact critical Essential Fish Habitat, is not in the public interest and will set a precedent for mangrove development that is inconsistent with Section 404 of the Clean Water Act.

Avoidance and Minimization

The wetland reduction in the current plan is a direct result of challenges raised by three non-profit organizations over the past five years. Through these challenges the project has been reduced from 5.8 acres of wetland impact to the current proposed 2.61 acres. This does not meet the test of avoidance and minimization because there remain practicable alternatives that have not been fully evaluated or designed into the project. The applicant has argued that the reduction in impacts demonstrates avoidance and minimization however if that were the test every project could simply propose an outrageous initial plan and meet the intent by whittling away until the project impact was acceptable. That is clearly not the intent of the Section 404 guidelines.

Section 404(b)(1) states that wetlands must be avoided to the extent practicable. This requires an evaluation of alternatives to both the location and footprint of a proposed project. The test for meeting this standard in this case should be a comparison of the

project to a previous, 1985 SFWMD permit that did not permit any wetland impacts in its approval of the applicants plan for 18 hotel units 600 SF in size contained entirely on the upland spoil area at the northern tip of the peninsula.

In contrast, the current proposal would transfer an *additional* 6 units from the uplands of South Seas Resort (SSR) onto the wetlands of Harbour Pointe so compared to the previously approved 18 units the project has expanded to 24 units requiring additional wetland impacts. In addition, the project proposes 2,000 - 2,500 sf units compared to the 600 sf hotel units previously permitted. The number and size of units clearly are expanding the project impact to wetlands instead of avoiding and minimizing impacts to critical resources.

The plan also proposes to locate a pool/spa on the uplands, forcing the residential units into the wetlands. No attempt has been made to evaluate alternative locations for the pool that would avoid and minimize wetlands such as locating the pool either on the roof of one of the buildings or under the buildings which is commonly done on these islands to meet the restrictive footprint allowances. Instead the placement of the pool has pushed the residential units into the wetlands. This is a fundamental opportunity for avoidance and minimization as these features are not wetland dependant.

Central to this issue is the ownership of the land. The applicant presents their project as limited to the 78 acre mangrove wetland peninsula with only 1.6 acres of uplands. However, Harbour Pointe is part of a single integrated master plan that includes all of South Seas Resort (SSR). The density and any development at Harbour Pointe is a function of and totally dependent upon the infrastructure provided by SSR, including private gated access, roads, water and sewer.

The proposed bridge requires use of SSR land to access the Harbour Pointe peninsula. The attempt to separate the Harbour Pointe project from SSR is a deliberate attempt to claim that the applicant owns no other uplands on which to situate these units. This claim is the result of their decision to sell off uplands and retain the wetlands. This self created hardship was a deliberate decision by the applicant who, as the owner and developer of SSR, sold the resort to another corporation and retained only the peninsular wetlands. A part of the sale however included private corporate agreements which provide for the transfer of an additional 6 units from SSR to Harbour Pointe among others. The agreements also provide for access to Harbor Pointe across what used to be a portion of the golf course, pictured below and attached to this email.

These impacts are not water dependant and must not be allowed to create a precedent for impacts to critical mangrove systems.



Photo: Dr. Loren Coen, SCCF Marine Lab Director

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Essential Fish Habitat

The project is located in black mangrove forest wetlands that are tidally connected to a marine ecosystem that is the only unimpaired Outstanding Florida Waterbody in Lee County- Pine Island Sound Aquatic Preserve. The site is hydrologically connected to both the Gulf of Mexico and waters of Pine Island Sound and is ecologically connected through carbon and detrital export, maintenance of water quality, wildlife utilization, invertebrate and fish habitat, and as nursery for many commercial and sport fish species, including mullet, tarpon, snook, seatrout, sheepshead and mangrove snapper; federally managed fish and species of national economic importance including snapper, red drum tarpon and shrimp.

Dr. Grant Gilmore, an international expert on mangrove fisheries currently working at Harbour Branch Oceanographic Institute, testified in the Administrative hearing on this project that the location of the mangroves at Harbour Pointe are critical due their location at an inlet pass. Juvenile fish spawn in the Gulf and are transported by tides into Pine Island Sound where they must quickly find protection from predators in order to survive. The mangroves closest to these inlet passes are most important because they provide the first mangrove habitat for protection from predators and a food supply. The mangroves at Harbour are the closest mangroves to this inlet pass because the development of SSR removed the mangroves all around their resort development, as shown in the photograph below.



These mangroves represent some of the most important wetland habitat for coastal fish and wildlife resources which are critical to the health of our aquatic systems and the specifically designated aquatic preserves and national wildlife refuges that surround this site. Mosquito fish, shrimp and fiddler crabs are abundant in this tidal system. They form the base of the food chain for fish biodiversity serving both as decomposers of the detrital export and as prey for larger species. Cutting off the nursery area and access will contribute to the degradation of the food web, biodiversity and abundance as well as the water quality.

The State of Florida, Department of Environmental Protection estimates that 75% of the game fish and 90% of the commercial fish species in South Florida rely on the mangrove system. This exceptional mangrove system is considered “*essential fish habitat*” by the National Marine Fisheries Service. The projects mangrove habitat also supports other habitats including dense and highly productive seagrass beds, shellfish and oyster bars.

Threatened and Endangered Species

A number of Threatened and Endangered species are present in the project area and surrounding special habitats that will be impacted by this project either directly through loss of habitat and degradation of conditions in the Aquatic Preserve or indirectly through secondary and cumulative impacts from the project. Based on the critical location of this project in proximity to three NWR and the fact that the Pine Island Sound Aquatic Preserve is the only Outstanding Florida Waterbody in Southwest Florida not classified as impaired and due to the potential impact of this project on a number of Threatened and

Endangered species, we request a consultation with the U.S. Fish & Wildlife Service. Federally designated species include:

American crocodile	Endangered
American Alligator	Threatened
Loggerhead	Threatened
Green sea turtle	Threatened
Leatherback turtle	Endangered
Hawksbill turtle	Endangered
Kemp's Ridley	Endangered
West Indian Manatee	Endangered

Recreational, Aesthetic and Economic Values

The project is located in proximity to four National Wildlife Refuges, one State Park, three aquatic preserves and is within the Charlotte Harbour National Estuary Program area.

The federal refuges include the J.N. "Ding" Darling National Wildlife Refuge, Pine Island Sound National Wildlife Refuge, Matlacha Pass National Wildlife Refuge and Island Bay National Wildlife Refuge. The Cayo Costa State Park is located to the north of the proposed site and the proposed development site is surrounded by three State Aquatic Preserves; Pine Island Sound AP, Matlacha Pass AP and Gasparilla Sound - Charlotte Harbor AP. This site is in the center of the coastal range of the Charlotte Harbour National Estuary Program (CHNEP) study area, a national partnership program. Each of these designations was made because of the rare and unique value of the habitat, fish and wildlife resources, water quality and uniqueness of the systems.

The CHNEP Comprehensive Conservation Master Plan (CCMP) addresses priority problems in the CHNEP study area that impede the health of the watersheds and estuaries. These priorities include water quality degradation, hydrologic alterations, fish and wildlife habitat loss. This development will contribute to each of these degraded conditions through the permanent destruction of black mangrove basin forest, replacing productive fish and wildlife habitat and scenic natural beauty with a concentrated development of impervious cover which will alter water flows and water quality.

Coastal mangrove systems are a tremendous economic driver to the local economy. The estuary contributes \$ 3 billion to the economy of this area and is responsible for 124,000 jobs. The game fish industry is dependent upon healthy mangrove and seagrass systems. In 2007 fishing license revenue in Lee Co. contributed \$990,650. The blue crab fishery in Lee County is estimated to be \$411,167.

The consequences of this development are not consistent with the public investment by Lee County, the State of Florida and federal government to preserve these natural resources.

Precedent

Development of the black mangrove basin forest ecosystem will not only have a direct impact causing the loss of mangrove habitat but will cause secondary and cumulative impacts which negatively affect the water quality and habitat resources in areas where Federal and State resources have invested public resources for protection for many years.

This project will permanently eliminate 2.61 acres of this critical coastal black mangrove wetland. Approval of this plan will set a *new precedent* for piecemeal destruction of wetlands and most importantly critical mangrove wetland systems. To allow the development of this critical mangrove forest and natural fish factory on a sensitive barrier island system undermines the standard for wetland and ecosystem protection and is in direct conflict with Section 404 of the Clean Water Act.

This proposed project will have an irrevocable, negative impact on the public resources and environmental functions of the special habitats and waters surrounding this project and will set a new precedent for wetland and mangrove protection. Our region knows far too well the economic and ecological costs of restoration over prevention of impacts. We urge you to deny this permit based on its failure to meet the basic standards required for protection of wetlands, essential fish habitat, threatened and endangered species and is clearly not in the public interest.

Sincerely,



Rae Ann Wessel
SCCF-Natural Resource Policy Director