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*Office of the General Counsel
Dan Meyer*

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**VIA FIRST CLASS MAIL, FACSIMILE [(321) 453.5220] & E-MAIL TO:
[irene.sadowski@sajo02.usace.army.mil]**

**Re: *USACE Permit Number ACOE 200001872 in the case of
Beach Renourishment at Indian River County, Florida, Sectors 1 & 2
Draft Environmental Assessment***

To the United States Army Corps of Engineers (“USACE” or “Corps”):

In response to Department of the Army, Jacksonville District Corps of Engineers Public Notice (Jan. 18, 2001), Public Employees for Environmental Responsibility (“PEER”) and its Amici Vert ? or “Green Friends”? hereby file comments concerning the USACE’s beach renourishment activities, a federal action having an adverse impact upon the quality of the human environment in south Florida. As the Draft Environmental Assessment (“DEA”) lacks sufficient detail to address all of the issues raised, infra, these comments are preliminary. More specific critique will follow as the DEA is revised to include more information on the Indian River project and its impact on the uncharted littoral resources on, and adjacent, to the Atlantic coast.

Of greatest concern is the Corps’ and the County’s failure to address:

- ? The presence of uncharted coral reef and hardbottom resources which are directly impacted by the silt generated by beach renourishment activities. Both the discovery hitherto undiscovered coral reefs off Broward County last year, and the State of Florida's concession that sufficient reef charting had not been completed during the Fiber-Optic cable laying rulemaking are proof positive that resources exist which have not been adequately addressed in the DEA.
- ? The presence of uncharted marine fisheries and exotic species spawn and nurture areas which are indirectly, though perhaps fatally, impacted by the silt generated through beach renourishment activities.

I. The Corps' unlawfully splinters the environmental review, ensuring that the adverse impact of their federal action will not be adequately assessed.

PEER and its Amici Vert challenge the propriety and lawfulness of "splintering" the beach renourishment environmental review in the same time-dishonored manner that many federal agencies have divided up their own federal actions into discrete segments which would ? when reviewed cumulatively ? present impacts triggering the more exhausting review required by a full Environmental Impact Statement ("EIS"). The USACE, through its present strategy, seeks to avoid conducting substantive environmental review. Sectioning off Sectors 1 and 2 along the Florida coast for a lower-level Environmental Assessment evaluation is unlawful unless the Corps shows why that area and adjacent areas affected by sand silting will not suffer a significant impact. Sectors 1 and 2 are part of a larger, cumulative and conceptually contiguous project which merits a EIS.

The Code of Federal Regulations requires the Corps to review, collectively and in the same EIS, all actions causing cumulative significant impacts. 40 C.F.R. §1508.25 (a) (2). And, indeed, numerous references to the Corps' cumulative, larger beach agenda, and its direct relationship to the work in Sectors 1 and 2 are even conceded in the DEA. Clearly, the overall project ? including all sectors of Indian River County proposed for beach renourishment within the next eight (8) years ? should be evaluated as an integrated whole in an EIS prior to finalizing permit conditions for Sectors 1 and 2.

Cumulative impacts on the reefs are likely to be greater than currently acknowledged in the EA. The proposed project is one of many similar projects. In its DEA, Indian County notes that this project and related projects together could have direct impacts on 44.4 acres of nearshore hardbottom reef habitat; direct impacts in the region would total 55.7 acres. Draft EA at 4-15. Indian County's DEA only assesses direct impacts. However, for this project, the Corps' Public Notice indicated that 6.7 acres would be indirectly impacted in addition to the 3.8 acres directly impacted. If, conservatively, a similar ratio applies cumulatively, over 100 acres of habitat in Indian County will be cumulatively affected, both directly and indirectly, while approximately 140 acres will be affected in the region. If turbidity effects are more widespread, the acreage affected will be even greater.

II. The National Environmental Policy Act (“NEPA”) requires evaluation of the full range of Alternatives.

NEPA requires an equivalent evaluation of “a full range of alternative Actions” to the proposed work on Sectors 1 and 2. The DEA fails to present and compare a full range of alternatives. See DEA at Section 2.1. It is unlawful to maintain, as the Corps’ DEA states in Section 2.1, that such alternatives “were evaluated in depth during the preliminary stages of project development”. Such pre-development discussions were part of a private, non-public process outside the NEPA review. It therefore lacks the public comment notice and hearing opportunity required under NEPA. To comply with NEPA, a full range of alternative actions to the proposed work on Sectors 1 and 2 must be presented and comparatively evaluated for public comment in either an EA, or, in certain circumstances presenting a significant impact, an EIS. The DEA devotes a scant two (2) pages to a cursory, almost mantra-like, chant of those alternatives. See DEA Section 2.2. The present DEA does not meet the requirements of the NEPA.

PEER and its Amici Vert therefore join other concerned parties and request that, prior to finalizing permit conditions for Sectors 1 and 2, the DEA be revised and presented again for public comment with a NEPA-compliant comparison of a full range of alternative Actions. Every effort should be made to present options that do not require the burial of hardbottom assets such as coral reefs.

III. Empirical proof of significant impact on existing environmental resources.

One of the more disturbing aspects of this permit application is that the USACE admits that the sand replenishment project will directly affect approximately 3.8 acres of nearshore reef habitat and indirectly affect approximately 6.7 acres of nearshore reef habitat. Public Notice at 3. The USACE admits that this project alone will affect 10.5 acres of reef. However, “[t]he applicant is proposing to compensate for the proposed direct impacts by the creation of approximately 3.8 acres of nearshore artificial reef in the ‘Vero Cove’ area.” Public Notice at 4. The applicant will thus replace less than half of the reef acreage affected by this project and substitute mangrove restoration for the rest. Id. Artificial reefs take time to develop and may not fully replace the existing habitat. No qualitative and quantitative analysis is presented regarding the ability of “manufactured” reef to replace natural reef; nor is analysis presented on the displacement or dislocation of young and adolescent marine fish and exotic species during the transition from natural to “manufactured” reef. The proposed mitigation will be insufficient to restore the amount of reef acreage damaged.

In addition, there is reason to believe that more acres of reef will be damaged than the DEA admits. The primary source of effects on the reefs is from increased turbidity. Public Notice at 3-4. In its Draft Environmental Assessment (EA), Indian County noted “while considerable biodiversity was present in all areas, greater sediment movement and increased turbidity may keep the inshore and intermediate hardbottom area somewhat less developed than those of higher relief located farther offshore.” Draft EA at 3-39. In other words, the DEA admits that there is a link between turbidity and loss of biodiversity, suggesting that the Corps and Indian County have failed to assess the full impact the effects on reefs from increased turbidity. Indeed, the DEA notes that “natural” turbidity in the area exhibits both temporal and spatial variations, making timing of beach restoration efforts critical to the actual effects on offshore reefs. Draft EA at 3-24 to 3-25. However, the Draft EA expressly notes “that due to the winter construction schedule, the project is likely to be built in rougher seas, increasing the turbidity generated during project construction, as well as background turbidity levels.” Draft EA at 4-3. Complicating matters, during the winter the levels of total particulate matter and particulate organic matter are already higher than in summer “in both the surf zone and offshore regions.” Draft EA at 3-24.

The implicit trade-off here is between the inconvenience to tourists and the death of a coral reef. While this trade may be made under NEPA, it may not be made absent an EIS.

IV. The EA admits to a lack of empirical data which must be generated through the EIS process.

It is one matter to state that certain information is not necessary to make a finding of “No Significant Impact” (“FONSI”), it is far another matter ? and unlawful ? to admit to a lack of information which can be supplied through the EIS process, and then propose that an EIS is not necessary. Indian County admits that “[d]etermining the magnitude of impacts on a regional basis is not possible due to the lack of comprehensive mapping in all the counties.” Draft EA at 4-15. Similarly, “[d]ue to the paucity of actual research and long term monitoring on nearshore hardbottom communities, determining what amount of cumulative impact is significant is difficult.” Draft EA at 4-17. Moreover, while the EA admits that “[p]roposed future actions within the County do add cumulatively and are adverse,” Indian County *assumes* “that the hardbottom habitat has not reached carrying capacity for the indigenous marine algae, fish, or macroinvertebrate fauna and that a small reduction in the amount of habitat will not adversely affect the populations of these species.” Id. If the science needs to be completed, complete the science before asking the public to comment.

Under the National Environmental Policy Act (NEPA), lack of information and uncertainty about the project's environmental effects generally mean that the federal agency involved must complete a full EIS to adequately assess the project's environmental effects. NEPA therefore requires that Indian River County and the Corps complete the full EIS procedure before attempting to proceed with this beach nourishment project.

V. *The DEA must be redrafted to meet the Corps concurrent obligation under Exec. Order No. 13089.*

The local authority's responsibilities aside, the Corps itself is under an affirmative obligation to act when the reefs involved in this project are coral reefs. The USACE has an affirmative duty under Executive Order No. 13089 to protect coral reefs. Exec. Order No. 13089, § 2(a), 63 Fed. Reg. 32701 (June 11, 1998). At the very least, under this Executive Order, the Corps is a “[f]ederal agency whose actions affect U.S. coral reef ecosystems” and that must as a result “provide for implementation of measures needed to research, monitor, manage, and restore affected ecosystems, *including, but not limited to, measures reducing impacts from pollution, sedimentation, and fishing.*” Id. § 3 (emphasis added). To the extent permitted by law, moreover, the Corps must “ensure that any actions [it] authorize[s], fund[s], or carr[ies] out will not degrade the conditions of such ecosystems.” Id. § 2(a).

The U.S. Coral Reef Task Force, which implements Executive Order No. 13089, has created a citizen complaint procedure to help to ensure that federal agencies comply with the terms of the Executive Order, and PEER will willingly make use of this procedure should the Corps continue to put reefs in jeopardy.

VI. *Further clarity can be added to the DEA, by correcting the following deficiencies:*

- ? It is not clear from where the Corps receives regulatory instruction on the preparation of a CIAR. If the Corps is simply writing a document called a CIAR, it would be unofficial and more properly labeled an appendix to the EA.
- ? The biological assessment (“BA”) and the biological monitoring plan, if it exists, should be in the EA and not provided subsequent to the process.
- ? How are the "pipelines" funneling the sand to be laid? Are they temporary and to be removed after the project or permanent? If pipelines are to be installed and require digging and covering, they themselves may be damaging in the long term. What are the best management practices to be used in breaching hardbottom structures?
- ? What is a GENESIS analysis?

For these reasons, PEER request the DEA be revised, that a finding of significant impact is likely, and that all parties proceed to review this project under the discipline and imposed structure of an Environmental Impact Statement.

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