

COMMENTS AND OBJECTIONS TO DEPARTMENT OF THE ARMY PERMIT APPLICATION

SAJ-2015-01503 — SEA SPRAY / AQUA BY THE BAY

Request for Permit Denial, Supplemental Information, Environmental Impact Statement, and Public Hearing

Submitted to:	U.S. Army Corps of Engineers, Jacksonville District
Project Manager:	Edgar W. Garcia, Senior Project Manager
Applicant:	Carlos Beruff / Longbar Pointe, LLLP
Project location:	Eastern shoreline of Sarasota Bay, Bradenton, Manatee County, Florida
Submitted by:	Joseph McClash 711 89 Street NW Bradenton FL 34209 941.915.0684
Date:	July 23, 2026

EXECUTIVE SUMMARY

These comments oppose issuance of the requested individual permit under § 404 of the Clean Water Act and § 10 of the Rivers and Harbors Act. The present record does not establish compliance with the mandatory CWA Section 404 (b) (1) (40 CFR 230) - US EPA Guidelines, does not support the Corps' preliminary conclusions concerning indirect effects, historic properties, endangered species, mitigation, or the public interest, and contains material inconsistencies that prevent a reasoned decision.

The proposed non-water-dependent residential and commercial development—approximately 2,468 dwelling units and 200,000 square feet of commercial space—would place fill in 3.07 acres of aquatic resources and would construct an 8-to-10-foot-high gabion wall immediately landward of high-functioning tidal mangrove wetlands and National Register-eligible archaeological sites. The development's purpose can plainly be achieved on uplands and through less damaging configurations. The applicant therefore bears the burden of rebutting the federal presumption that practicable, less environmentally damaging alternatives are available.¹

The Corps should deny the permit unless and until the applicant supplies a complete alternatives analysis, reconciles contradictory descriptions of the wetland buffer and stormwater system, evaluates direct, indirect, secondary, and cumulative effects on the entire connected wetland-estuarine system, provides a defensible mitigation plan using the federal watershed approach, completes required ESA, EFH, and NHPA consultation, and demonstrates that the project is not contrary to the public interest.² The Corps should prepare an Environmental Impact Statement or, at minimum, a full Environmental Assessment supported by independent technical review, and should conduct a public hearing.

¹ (a) Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

² (c) Sequencing.

(1) Nothing in this section affects the requirement that all DA permits subject to section 404 of the Clean Water Act comply with applicable provisions of this part.

(2) Pursuant to these requirements, the district engineer will issue an individual section 404 permit only upon a determination that the proposed discharge complies with applicable provisions of 40 CFR part 230, including those which require the permit applicant to take all appropriate and practicable steps to avoid and minimize adverse impacts to waters of the United States. Practicable means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. Compensatory mitigation for unavoidable impacts may be required to ensure that an activity requiring a section 404 permit complies with the Section 404(b)(1) Guidelines.

I. Requested Agency Action

1. Deny the permit because the record does not demonstrate compliance with 40 C.F.R. Part 230 and 33 C.F.R. § 320.4.³
2. Alternatively, suspend processing and issue a formal request for additional information addressing every item identified below.
3. Require a project-wide practicable-alternatives analysis, including off-site and upland-only alternatives, reduced-density alternatives, elimination or relocation of the gabion wall, and avoidance of all wetland fill⁴.
4. Prepare an Environmental Impact Statement because the scale, shoreline setting, unresolved scientific controversy, archaeological resources, flood risk, and connected wetland-estuarine effects present potentially significant impacts. At minimum, prepare and circulate a full Environmental Assessment before any decision.
- ⁵5. Conduct a public hearing under 33 C.F.R. Part 327. The issues are substantial, technical, disputed, and of broad public interest.
6. Reopen or extend the public-comment period after the complete application, alternatives analysis, jurisdictional materials, agency consultation documents, mitigation instruments, hydrologic modeling files, and revised plans are publicly available.
7. Require a current site-specific MHW determination, map the 300-foot line using both the official datum and current-data sensitivity scenarios, and complete a fifty-year mangrove-migration and coastal-squeeze analysis.
8. If the Corps considers issuance, impose enforceable special conditions, independent monitoring, financial assurances, adaptive-management triggers, and permit reopening/suspension provisions.

³(b) **Effect on wetlands.** (4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3), of this section unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the section 404(b)(1) guidelines (40 CFR part 230.10(a) (1), (2), (3)).

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, Pub. L. 90-454, and state regulatory laws or programs for classification and protection of wetlands will be considered.

⁴(3) In accordance with Executive Order 11988, the district engineer should avoid authorizing floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no such practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which will lessen any significant adverse impact to the floodplain.

⁵42 USC 4336: Procedure for determination of level of review (b) Levels of review

(1) Environmental impact statement

An agency shall issue an environmental impact statement with respect to a proposed agency action requiring an environmental document that has a reasonably foreseeable significant effect on the quality of the human environment.

(2) Environmental assessment

An agency shall prepare an environmental assessment with respect to a proposed agency action that does not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown, unless the agency finds that the proposed agency action is excluded pursuant to one of the agency's categorical exclusions, another agency's categorical exclusions consistent with section 4336c of this title, or another provision of law. Such environmental assessment shall be a concise public document prepared by a Federal agency to set forth the basis of such agency's finding of no significant impact or determination that an environmental impact statement is necessary.

II. Governing Federal Standards

A. Section 404(b)(1) Guidelines are mandatory

Under 33 C.F.R. § 320.4(a), a § 404 permit must be denied if the discharge would not comply with the EPA's § 404(b)(1) Guidelines. The Guidelines prohibit a discharge where a practicable alternative exists that would have less adverse effect on the aquatic ecosystem, where the discharge would cause or contribute to significant degradation, where all appropriate and practicable minimization measures have not been taken, or where the record is insufficient to make a reasonable compliance judgment. 40 C.F.R. §§ 230.10 and 230.12.

Because the basic project is residential and commercial development rather than an activity requiring access or proximity to wetlands, it is non-water-dependent. Under 40 C.F.R. § 230.10(a)(3), practicable alternatives that do not involve special aquatic sites are presumed available and presumed less damaging unless the applicant clearly demonstrates otherwise. Project purpose may not be defined so narrowly that it excludes reasonable alternatives.

B. The Corps must evaluate secondary and cumulative effects

Federal review is not confined to the precise footprint of fill. Section 230.11 requires factual determinations concerning secondary effects and cumulative effects. The Guidelines expressly identify surface runoff from residential or commercial development on fill, and activities conducted on fast lands created by fill, as secondary effects that must be evaluated. The Corps must collect and solicit information concerning cumulative aquatic effects and assess the project in combination with known and reasonably foreseeable activities.

C. Public-interest review is project-wide

Under 33 C.F.R. § 320.4(a), the Corps must balance all reasonably relevant factors, including cumulative effects, wetlands, fish and wildlife, flood hazards and floodplain values, shoreline erosion, recreation, water quality, historic properties, navigation, land use, safety, economics, and the needs and welfare of the public. Wetlands are productive public resources, and even a seemingly small alteration must be evaluated as part of the complete and interrelated wetland area. 33 C.F.R. § 320.4(b).

D. Mitigation cannot substitute for avoidance

Compensatory mitigation addresses only unavoidable impacts after avoidance and minimization. 33 C.F.R. Part 332 requires a watershed approach, consideration of resource type and landscape position, replacement of lost functions and services, and greater-than-one-to-one ratios where necessary for temporal loss, risk, distance, or functional mismatch. A mitigation-bank purchase cannot cure a failure to analyze practicable alternatives or unquantified secondary effects.

III. Material Record Deficiencies and Inconsistencies

A. The application has not demonstrated that wetland impacts are unavoidable

The public notice states that the applicant minimized impacts by changing from single-family housing to higher-density multi-family development. That comparison does not satisfy the federal alternatives test. The relevant question is not merely whether the current layout is smaller than an earlier preferred plan, but whether the overall project purpose can be met through an upland-only plan, reduced density, different internal road alignments, structured parking, relocation of buildings, relocation or elimination of the wall, acquisition or use of alternative sites, or other practicable methods that avoid or further reduce aquatic impacts.

The notice provides no cost analysis, logistics analysis, site-selection analysis, market analysis, or side-by-side environmental comparison sufficient to rebut the presumption applicable to non-water-dependent development. The Corps should require an alternatives matrix identifying each alternative, wetland acreage, secondary-effect acreage, tidal-resource effects, floodplain effects, cultural-resource effects, stormwater performance, cost, technology, logistics, and reasons for rejection.

B. The stated 50-foot buffer conflicts with the state-permit record

The public notice asserts that a 50-foot permanent buffer, combined with the gabion wall, will prevent direct and indirect impacts. The applicant's November 5, 2024 response to the state agency, however, described a 25-foot offset from the wall and quantified 2.23 acres of secondary wetland impacts—1.56 acres of non-tidal freshwater wetlands and 0.67 acre of tidal mangrove wetlands. The Lewis Verified Petition further alleges that the operative design eliminates required wetland buffers and places the wall and development immediately adjacent to wetlands. The petition was not adjudicated because of a late filing due not that the Petition lacked merit.

These descriptions cannot all be correct. The Corps should require a surveyed plan showing, at ten-foot intervals, the distance from the jurisdictional wetland line to the wall, wall footing, grading limits, buildings, roads, utilities, stormwater features, trails, fences, lighting, and all construction-access areas. The plan must distinguish a true vegetated ecological buffer from a wall setback or maintenance strip. If the design has materially changed, the Corps should issue a corrected public notice.

C. The mitigation proposal appears to omit acknowledged secondary losses

The public notice describes 0.92 functional units of direct freshwater loss and proposes 1.08 freshwater herbaceous credits. The state RAI response separately acknowledged approximately 0.23 functional units of secondary loss, including tidal mangrove effects, and proposed additional mitigation concepts. The Corps' notice does not explain whether those secondary debits were accepted, rejected, recalculated, or omitted. Nor does it explain how out-of-kind freshwater credits would replace tidal shoreline, wildlife-corridor, nursery-habitat, water-quality, and shoreline-protection services.

The Corps should independently verify UMAM or use an appropriate federal functional assessment; disclose all raw field data, scoring rationales, seasonal observations, and acreage calculations; apply the watershed approach; and require mitigation that replaces the specific functions and services at risk. Any tidal or mangrove loss should be addressed with in-kind, service-area-appropriate mitigation and adequate ratios for risk, temporal loss, and distance.

D. The gabion wall requires a full indirect-effects and coastal-process analysis

The wall is not merely a construction technique. An 8-to-10-foot vertical barrier extending along the landward edge of tidal wetlands may alter sheet flow, groundwater exchange, sediment movement, wave reflection, wrack transport, wildlife movement, root-zone conditions, salinity gradients, and the ability of wetlands and mangroves to migrate inland as sea level rises. The wall may also concentrate scour or erosion at its ends and convert a naturally adaptive shoreline into a fixed edge.

NOAA describes hardened shorelines as generally providing fewer habitat, water-quality, and flood-resilience benefits than natural or living shorelines; published NOAA-supported research reports that shoreline hardening exacerbates erosion and blocks upslope transgression of coastal habitats. These effects are directly relevant to the Corps' wetland, shoreline-erosion, fish-and-wildlife, floodplain, and public-interest findings.

The Corps should require independent coastal and groundwater modeling addressing ordinary tides, king tides, storm surge, wave runup and reflection, sea-level rise, rainfall-driven groundwater mounding, seepage through or beneath the wall, scour, end effects, long-term maintenance, failure modes, and post-failure impacts. The analysis should compare the wall with no-wall, relocated-wall, terraced, nature-based, and living-shoreline alternatives. The Corps must determine why this Gabion Wall is not a seawall; if constructed the wall during Hurricane Helene would have met the definition of a seawall. Seawalls are prohibited in this National Estuary.

E. Stormwater and flood-risk information is incomplete and internally inconsistent

The March 2025 drainage analysis states that only the West Basin changes between pre- and post-development models, that an existing pond will serve the development, and that post-development 100-year/24-hour pond freeboard falls to approximately 0.58 foot from approximately 3.84 feet pre-development. It also states that the

system is gravity-operated. The public notice, by contrast, refers to two wet-detention ponds. The Corps should reconcile the number, configuration, ownership, and hydraulic operation of the stormwater facilities.

A 0.58-foot modeled freeboard under the 100-year/24-hour event warrants close review in a low coastal setting with shallow groundwater and tidal tailwater. The analysis should evaluate current rainfall data, future precipitation, compound flooding, blocked or tide-locked outfalls, storm surge, sea-level rise, antecedent saturation, maintenance failures, and construction-phase dewatering. The Corps should obtain the native ICPR model files and require independent sensitivity and uncertainty analyses rather than relying solely on summary tables.

The geotechnical material included with the drainage report was based on only two shallow borings at a designated location for an earlier lagoon-related evaluation and expressly cautioned against extrapolation across unexplored areas. That limited investigation is not a sufficient basis for conclusions about site-wide seasonal high groundwater, wall performance, dewatering, seepage, settlement, or wetland hydrology.

F. Water-quality and estuarine effects require project-specific analysis

Sarasota Bay is a National Estuary and an Outstanding Florida Water. EPA and Sarasota Bay program materials document the central relationship between nitrogen loading, algal growth, light limitation, and seagrass condition. A large residential-commercial development near high-functioning mangroves can generate chronic nutrient, bacteria, pesticide, hydrocarbon, metal, microplastic, pet-waste, and sediment loads through stormwater and groundwater pathways.

The Corps should require a mass-balance pollutant analysis for construction and operation, including dissolved nutrients not removed efficiently by detention, groundwater seepage, fertilizer assumptions, pet waste from the dog park, reclaimed-water irrigation, emergency overflows, pond mixing, residence time, salinity, and extreme events. The analysis must consider cumulative loads from existing and reasonably foreseeable development in the Sarasota Bay watershed.

G. Fish, wildlife, essential fish habitat, and listed species review is incomplete

The intact mangrove fringe is nursery, forage, refuge, and shoreline habitat connected to Sarasota Bay. The public notice identifies potential effects to listed species but does not provide completed consultation findings. The Corps should make a conservative “may affect” determination where appropriate and complete consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service before issuing a permit.

The Corps should also consult under the Magnuson-Stevens Act concerning Essential Fish Habitat and assess effects on mangrove, seagrass, shallow-water, and estuarine nursery functions. Review should include construction noise and lighting, human and pet intrusion, boat and recreational pressure, altered hydrology and salinity, pollutant loading, shoreline hardening, loss of wetland migration space, and cumulative habitat fragmentation.

H. The preliminary “no adverse effect” finding for archaeological sites is unsupported

The public notice acknowledges two intact, National Register-eligible pre-Columbian archaeological sites within the mangrove fringe. The asserted “no adverse effect” conclusion depends heavily on the wall and buffer—the same design elements that are disputed and inconsistently described. Effects under Section 106 include reasonably foreseeable direct and indirect effects, not only excavation within the site boundary.

The Corps should define the Area of Potential Effects to include vibration, settlement, erosion, scour, hydrologic change, tree-root change, unauthorized access, looting, visual and setting effects, emergency repairs, and long-term wall maintenance. Consultation should include the State Historic Preservation Officer, affiliated Tribal Nations, and other consulting parties. A cultural-resources protection, monitoring, inadvertent-discovery, and emergency-response plan should be completed before any permit decision.

I. The Corps must evaluate the entire connected project and prevent segmentation

The notice describes a 169.44-acre site, while the drawings identify a larger project boundary and adjacent residential construction. The Corps should determine whether Sea Spray, Aqua Lagoon phases, commercial areas, roads, utilities, stormwater facilities, shoreline work, and related permits are connected actions or cumulative actions. The federal analysis may not be limited to a small fill footprint if the permitted fill enables or is integral to a larger development whose aquatic effects are reasonably foreseeable.

J. Current NOAA water-level information and the 300-foot MHW line

The application materials do not identify the NOAA station, National Tidal Datum Epoch, benchmark, field-survey date, vertical-datum conversion, or methodology used to establish the Mean High Water elevation and line from which any 300-foot retained-water or shoreline measurement was taken. The currently adopted tidal datum may remain tied to the 1983-2001 National Tidal Datum Epoch, but it cannot serve as the sole factual basis for evaluating present and reasonably foreseeable hydrology where more recent reliable federal observations show material relative water-level change.

NOAA's Port Manatee station, No. 8726384, reports a relative sea-level trend of approximately 5.46 millimeters per year, with a reported uncertainty of approximately plus or minus 0.63 millimeter per year. Applying the central historical trend to the nineteen-year separation between the midpoint of the existing 1983-2001 epoch and the midpoint of the forthcoming 2002-2020 epoch yields approximately 103.7 millimeters, or 4.08 inches (0.34 foot), of relative water-level change. Applying the same trend over a reasonable fifty-year project horizon yields approximately 273 millimeters, or 10.75 inches (0.90 foot), with a trend-based range of approximately 0.79 to 1.00 foot.

These calculations are not substitutes for NOAA's future official revised MHW datum. They are reliable sensitivity information relevant to the location of tidal influence, the landward position of the MHW line, the 300-foot boundary, wetland hydroperiod, stormwater tailwater, wall performance, flood hazards, shoreline erosion, and wetland migration. The Corps should require a current site-specific tidal determination and mapped sensitivity lines using at least 0.34 foot and 0.90 foot higher-water scenarios.

The Corps should require disclosure of every MHW survey and calculation prepared for the property; the NOAA control and subordinate stations used; the tidal epoch; the MHW and MHHW elevations in NAVD 88 and any other vertical datum; benchmark and survey-control data; any subordinate-station observations; and CAD/GIS files showing the current and sensitivity-based 300-foot lines.

K. Coastal squeeze and loss of the mangrove shoreline's adaptation capacity

The application treats the present mangrove boundary as though preserving today's surveyed line preserves the resource indefinitely. Mangrove shorelines are dynamic tidal systems. As relative sea level rises, mangroves must maintain surface elevation through sediment and organic accumulation or migrate landward into adjoining low-elevation lands. A permanent wall, fill pad, roads, and development immediately landward of the mangroves would trap the ecological community between rising tidal waters and a fixed artificial barrier, a process commonly described as coastal squeeze.

Over the fifty-year life of the development and wall, approximately 0.90 foot of trend-based relative water-level rise would materially increase the risk of prolonged inundation, erosion, altered sediment dynamics, loss of recruitment area, fragmentation, and conversion of portions of the mangrove fringe to mudflat or open water. Even if existing trees remain standing for some period, the community's ability to replace itself at higher elevations would be blocked. A narrow wall setback or maintenance strip is not a functional migration corridor unless it has sufficient width, elevations, soils, hydrologic connection, and permanent legal protection.

The resulting future loss is a foreseeable secondary effect of the discharge and associated development under 40 C.F.R. § 230.11(h), and it must be considered cumulatively under § 230.11(g). The Corps should require a project-wide wetland-migration analysis showing existing ground and wetland elevations, current and future

tidal surfaces, hydroperiods, sediment-accretion assumptions, landward migration pathways, acreage blocked by the wall and development, and loss of fish-nursery, shoreline-stabilization, wave-attenuation, water-quality, and wildlife-corridor functions.

The applicant's assertion that the wall protects the mangroves is incomplete and potentially misleading. A wall may deter immediate human encroachment while simultaneously eliminating the wetland's long-term adaptation space. The wall should not receive avoidance or minimization credit unless the applicant demonstrates that it will preserve, rather than diminish, the mangrove system's long-term ecological functions.

L. The UMAM assessment fails to evaluate sea-level rise, coastal squeeze, and the full mangrove acreage at risk

The applicant assigns only approximately 0.07 functional unit of loss to approximately 0.67 acre of tidal-mangrove secondary impact. That result implies only about a 0.10 functional-score reduction and appears to assume a minor short-term decline. The submitted UMAM materials do not meaningfully address sea-level rise, landward migration, loss of recruitment area, coastal squeeze, wall-related hydrologic changes, scour, sediment effects, or long-term conversion risk.

The Corps' notice and state response materials identify a larger area of indirect tidal-wetland effects than the applicant's 0.67-acre UMAM area. At a minimum, the Corps should recalculate the full federally recognized tidal impact area. Using 1.9 acres, a current-condition score of 9/9/9, a with-project score of 5/5/5, and a functional delta of 0.40 produces an undiscounted loss of approximately 0.76 functional unit. Even if the Corps applies only a 75-percent probability of fifty-year loss, the expected loss is approximately 0.57 functional unit. A more substantial with-project score of 4/4/4 produces approximately 0.95 undiscounted unit or approximately 0.71 unit at a 75-percent probability.

These preliminary calculations are not offered as a substitute for agency scoring or expert field analysis. They demonstrate that the applicant's 0.07-unit figure does not reasonably bound the probable fifty-year loss. If the agency considers the future loss reasonably expected, it should be reflected directly in the with-project UMAM scores. If the agency considers the precise future acreage uncertain, it should require a probability-weighted sensitivity analysis rather than assume no loss.

The impact acreage itself also appears artificially narrow. The Long Bar Pointe mitigation-bank habitat mapping identifies approximately 120.81 acres of FLUCCS 612 mangrove swamp forming a long and substantially continuous shoreline band. That acreage is not established here as the amount that will be lost, but it defines the scale of the connected resource that must be evaluated. A project-wide bounding analysis using 120.81 acres shows the magnitude omitted by the applicant's calculation: at a 50-percent probability and a 0.40 functional delta, expected loss is approximately 24.16 functional units; at a 75-percent probability and a 0.50 delta, approximately 45.30 units; and an absolute upper bound assuming complete loss of the existing 0.90 functional value is approximately 108.73 units.

The Corps should not adopt those bounding figures as final debits without site-specific modeling. It should require GIS-based delineation of the entire mangrove fringe; parcel-by-parcel ownership and conservation status; elevations and hydroperiods; sediment-accretion capacity; projected tidal surfaces; available migration corridors; portions blocked by the wall, fill, roads, and buildings; and a transparent recalculation of both impact acreage and functional loss.

M. Prior Long Bar Pointe mitigation-bank proposal, common management, and potential segmentation

The Corps should investigate the relationship between the present Sea Spray/Aqua development application, the prior Long Bar Pointe Mitigation Bank proposal, Corps File No. SAJ-2016-01900, and Florida DEP Mitigation Bank Permit No. 0338349-002. The 2016 mitigation-bank materials identify Long Bar Pointe, LLLP as the client and map approximately 120.81 acres of mangrove swamp, approximately 107.33 acres of bay-and-estuary seagrass, and additional estuarine habitats along the same Sarasota Bay shoreline.

Current Florida corporate records for Long Bar Pointe, LLLP list 1651 Whitfield Avenue, Suite 200, Sarasota, Florida 34243 as both the principal place of business and mailing address. The same filing identifies Long Bar GP LLC, at that address, as the general partner; identifies Carlos Beruff as the manager signing for the general partner; and identifies Charles Tokarz as registered agent at the same address. These records provide substantial evidence of organizational affiliation, common management, and a shared business location.

Submissions to Manatee County by the applicant in 2016 provide evidence the property as a whole was owned by the same entities and the plans existed that would have avoided wetland impacts. Excerpt below:

The ownership of the Aqua land is very unique in that the applicant has title of the upland areas and submerged lands along the coast. The applicant plans to largely cluster the development around the viable wetlands and plans several multi-story buildings to maximize the waterfront views while limiting the building footprints on the land, thereby limiting environmental impacts.

Aqua
September, 2016

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The commenter understands that the DEP mitigation-bank application or permit was submitted or issued in the name of Long Bar Pointe, LLLP and may later have been withdrawn, surrendered, or otherwise discontinued. The Corps should obtain and disclose the official DEP permit, prospectus, withdrawal or surrender documents, conservation easements, credit ledger, monitoring records, and all ownership and control records before determining the relationship among the projects.

Separate entities, parcels, or permit numbers do not make environmentally connected activities separate for purposes of the § 404(b)(1) cumulative- and secondary-effects analysis, NEPA review, or the Corps' public-interest balancing. The controlling questions are whether the activities are geographically connected, functionally related, under common ownership or control, part of a common development plan, or cumulatively affect the same aquatic ecosystem.

The former mitigation-bank materials are also admissions concerning the scale and ecological character of the shoreline resource. The same affiliated development interests previously mapped more than 120 acres of continuous mangrove swamp, while the current permit record limits tidal-mangrove secondary effects to 0.67 acre. The Corps should require a reconciliation of those representations and determine whether corporate or parcel divisions have improperly narrowed the geographic scope of federal review.

The Corps should require disclosure of all ownership, management, agency, financing, infrastructure, development, and conservation relationships among Long Bar Pointe, LLLP, Long Bar GP LLC, Cargor Partners entities, Medallion Homes, Carlos Beruff, Charles Tokarz, and any other entity owning or controlling the development, shoreline, or former mitigation-bank parcels. It should evaluate all connected and reasonably foreseeable phases together and prohibit segmentation of the aquatic-impact analysis.

IV. Scientific Authorities Supporting Further Review

Shoreline hardening and coastal squeeze. NOAA materials explain that hardened shorelines generally provide fewer ecological and resilience benefits than natural/living shorelines. NOAA-supported research reports that hardened structures can exacerbate erosion and prevent landward migration of shoreline habitats

under sea-level rise.⁶ These authorities support analysis of wetland migration space, end scour, habitat fragmentation, and nature-based alternatives.

Mangroves and flood/wave protection. NOAA coastal-science materials identify mangroves as a first line of defense that attenuates wave energy and reduces flooding risk. Fixing the upland boundary with a wall can impair that protective system's capacity to adjust and migrate.

Sarasota Bay nutrients and seagrass. EPA National Estuary Program materials report that excessive nitrogen promotes algae and reduces light available to submerged seagrass, while past nitrogen reductions in Sarasota Bay were associated with seagrass gains. This supports a rigorous pollutant-load and cumulative-water-quality analysis.

Wetlands as integrated systems. The Corps' own regulation recognizes wetlands as valuable for habitat, natural drainage, salinity and flushing, storm protection, flood storage, groundwater relationships, and water purification, and requires evaluation of piecemeal impacts as part of a complete and interrelated wetland area.

V. Information the Corps Should Require Before Further Processing

1. Complete current application and all appendices, drawings, jurisdictional determinations, data sheets, photographs, agency correspondence, and prior federal permit history.
2. An applicant-defined overall project purpose broad enough to permit meaningful alternatives, followed by a Corps-verified practicable-alternatives analysis.
3. GIS/CAD files and a surveyed buffer/setback exhibit reconciling the claimed 50-foot buffer, the 25-foot offset, wall location, wetland line, grading, and all permanent and temporary disturbance.
4. Complete wetland functional assessments for direct and secondary impacts, with raw data, seasonal surveys, Corps verification, and a federal mitigation plan under 33 C.F.R. Part 332.
5. Hydrologic, hydrogeologic, coastal-process, scour, and wall-stability analyses, including sea-level-rise and compound-flooding scenarios.
6. Native stormwater-model files, assumptions, calibration information, sensitivity analyses, outfall/tailwater conditions, and pollutant-load modeling.
7. Construction dewatering plan identifying discharge locations, treatment, monitoring, salinity and turbidity controls, contingency measures, and impacts on wetland hydroperiod.
8. Full threatened/endangered species surveys and completed ESA consultation; EFH assessment and NMFS consultation.
9. Completed Section 106 consultation, a defensible Area of Potential Effects, and protective plans for the two eligible archaeological sites.
10. Project-wide cumulative-impact analysis covering all phases, adjacent development, shoreline alteration, regional wetland losses, stormwater loading, recreational use, and climate-related changes.
11. Current and historical MHW surveys, NOAA station and tidal-epoch information, benchmark and vertical-datum conversion records, and CAD/GIS mapping of the present and sensitivity-based 300-foot lines.
12. A fifty-year wetland-migration and coastal-squeeze model covering the full connected mangrove shoreline, including the 120.81 acres mapped in the former mitigation-bank materials.

⁶ Sea level rise can cause coastal squeeze, where saltwater wetland habitats are reduced in size or lost altogether due to coastal structures blocking natural upland migration (Gilman et al. 2008). The buffering capacity of mangroves to reduce nutrients, sediment, and other pollution loading to the bay may be reduced or lost (Harbison 1986). SBEP and Shafer Consulting, LLC. 2017. Embracing Our Future: Sarasota Bay Estuary Program Climate Vulnerability Assessment. Prepared for the Sarasota Bay Estuary Program (SBEP) and United States Environmental Protection Agency. 48 pp.

13. Official DEP and Corps records for the former Long Bar Pointe Mitigation Bank, including permit status, withdrawal or surrender documents, conservation easements, credit records, ownership, and monitoring obligations.

14. Draft enforceable permit conditions, monitoring plans, financial assurances, long-term maintenance obligations, adaptive-management criteria, and consequences for noncompliance.

VI. Grounds for a Public Hearing

A public hearing is warranted because the record presents substantial unresolved issues of fact and law: the actual buffer width; the amount and type of secondary wetland loss; the wall's effects on hydrology, scour, mangrove roots, wildlife movement, and wetland migration; conflicting stormwater descriptions; reduced flood freeboard; limited geotechnical data; mitigation adequacy; listed-species and EFH effects; effects on two National Register-eligible sites; segmentation; and the availability of practicable less-damaging alternatives. These issues concern Sarasota Bay, a public estuary of regional ecological, recreational, cultural, and economic importance, and cannot be resolved reliably through applicant submissions alone.

VII. Conclusion

The current record is insufficient for the Corps to make the written factual determinations and compliance findings required by 40 C.F.R. §§ 230.11⁷ and 230.12⁸ or the balanced public-interest determination required by 33 C.F.R. § 320.4.⁹ The applicant has not rebutted the presumption that practicable, less-damaging

⁷ (b) Water circulation, fluctuation, and salinity determinations. Determine the nature and degree of effect that the proposed discharge will have individually and cumulatively on water, current patterns, circulation including downstream flows, and normal water fluctuation. Consideration shall be given to water chemistry, salinity, clarity, color, odor, taste, dissolved gas levels, temperature, nutrients, and eutrophication plus other appropriate characteristics. Consideration shall also be given to the potential diversion or obstruction of flow, alterations of bottom contours, or other significant changes in the hydrologic regime. Additional consideration of the possible loss of environmental values (§§ 230.23 through 230.25) and actions to minimize impacts (subpart H), shall be used in making these determinations. Potential significant effects on the current patterns, water circulation, normal water fluctuation and salinity shall be evaluated on the basis of the proposed method, volume, location, and rate of discharge.

⁸ (3) Specified as failing to comply with the requirements of these Guidelines where:

(i) There is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as such alternative does not have other significant adverse environmental consequences; or

(ii) The proposed discharge will result in significant degradation of the aquatic ecosystem under § 230.10(b) or (c); or

(iii) The proposed discharge does not include all appropriate and practicable measures to minimize potential harm to the aquatic ecosystem; or

(iv) There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines.

⁹ (b) Effect on wetlands.

(1) Most wetlands constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

alternatives exist for this non-water-dependent development; acknowledged secondary impacts are not transparently carried through the public notice and mitigation proposal; the MHW and 300-foot lines are not supported by disclosed current tidal information; the UMAM analysis does not evaluate fifty-year coastal squeeze or the larger connected mangrove system; and major questions remain concerning stormwater, flood risk, shoreline hardening, mangrove migration, water quality, wildlife, archaeological resources, common control, and segmentation.

For these reasons, the permit should be denied. At minimum, processing should be suspended pending a complete alternatives analysis, independent technical review, completed federal consultations, a project-wide NEPA analysis, corrected public notice, renewed public comment, and a public hearing.

Respectfully submitted,

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(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are ground water discharge areas that maintain minimum baseflows important to aquatic resources and those which are prime natural recharge areas;

(vii) Wetlands which serve significant water purification functions; and

(viii) Wetlands which are unique in nature or scarce in quantity to the region or local area.

(3) Although a particular alteration of a wetland may constitute a minor change, the cumulative effect of numerous piecemeal changes can result in a major impairment of wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it may be part of a complete and interrelated wetland area. In addition, the district engineer may undertake, where appropriate, reviews of particular wetland areas in consultation with the Regional Director of the U. S. Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate state agency to assess the cumulative effect of activities in such areas.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3), of this section unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, that the benefits of the proposed alteration outweigh the damage to the wetlands resource. In evaluating whether a particular discharge activity should be permitted, the district engineer shall apply the section 404(b)(1) guidelines (40 CFR part 230.10(a) (1), (2), (3)).

Source and Record References

1. U.S. Army Corps of Engineers, Public Notice, SAJ-2015-01503, published July 17, 2026, comment deadline August 7, 2026.
2. Richard B. Lewis, Verified Petition for Formal Administrative Hearing concerning SWFWMD Permit No. 43040157.053 (April 2025).
3. WRA Engineering, Drainage Analysis, Aqua by the Bay (March 2025), including Table 1 and geotechnical appendix.
4. Monarch Ecology Group, response to SWFWMD Request for Additional Information, Item 13 (Nov. 5, 2024).
5. Monarch Ecology Group, Environmental Assessment Report for SWFWMD/FDEP/State 404 application (Dec. 11, 2023).
6. WRA Engineering, Mass Grading / Permitted Plans and UMAM impact sheets.
7. 33 C.F.R. Parts 320, 325, 327, and 332.
8. 40 C.F.R. Part 230, including §§ 230.10, 230.11, and 230.12.
9. National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; applicable Corps NEPA procedures.
10. Endangered Species Act § 7, 16 U.S.C. § 1536; National Historic Preservation Act § 106, 54 U.S.C. § 306108; Magnuson-Stevens Act EFH provisions, 16 U.S.C. § 1855(b).
11. NOAA Fisheries, Understanding Living Shorelines (explaining habitat, water-quality, and flood-resilience benefits of natural shoreline approaches).
12. NOAA-supported research concerning shoreline hardening, erosion, and obstruction of landward habitat migration under sea-level rise.
13. NOAA coastal-science materials concerning mangrove wave attenuation and coastal-flood protection.
14. U.S. EPA / Sarasota Bay National Estuary Program materials concerning nitrogen loading, algae, light limitation, and seagrass condition.
15. NOAA, Relative Sea Level Trend, Port Manatee Station 8726384.
16. U.S. Army Corps of Engineers, Public Notice and habitat mapping, SAJ-2016-01900, Long Bar Pointe Mitigation Bank (2016).
17. Long Bar Pointe Mitigation Bank habitat map identifying approximately 120.81 acres of FLUCCS 612 mangrove swamp and approximately 107.33 acres of bay-and-estuary seagrass.
18. Florida Division of Corporations, 2026 Annual Report for Long Bar Pointe, LLLP, Document No. A04000000148.
19. Florida DEP Mitigation Bank Permit No. 0338349-002 and related prospectus, permit-status, withdrawal, surrender, conservation-easement, and credit records, to be obtained and made part of the administrative record.

Attachments

Commenter will provide attachments in another email