

February 20, 2023

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Re: Permit Application No. SWG-2007-321 by Johnson Beach Development, LLC.

To whom it concerns:

The Houston Audubon Society, 440 Wilchester Blvd., Houston, Texas 77079 would like to submit these comments regarding the permit application SWG-2007-00321 by Johnson Beach Development, LLC being reviewed pursuant to Section 404 of the Clean Water Act. According to the Public Notice, the project is located southeast of State Highway 87 and Rettilon Road intersection, ocean-side of the Houston Audubon Society Bolivar Flats Shorebird Sanctuary on the Bolivar Peninsula, Galveston County, Texas.

According to the Public Notice, the applicant proposes to fill 0.72 acres of non-tidal wetlands in order to construct a housing development. The Houston Audubon Society has serious concerns about the proposed project. The mission of the Houston Audubon Society is to advance the conservation of birds and positively impact their supporting environments. In order to fulfill this mission, the Houston Audubon Society has acquired by purchase and donation several sanctuaries in the Houston Galveston area totaling over 4,100 acres. These sanctuaries serve as essential refuges for birds and other wildlife important to Gulf Coast ecology, and they offer important outdoor educational opportunities for the public. The Bolivar Flats Shorebird Sanctuary specifically, the only neighboring property to this proposed development, is designated a globally important shorebird sanctuary that has played a critical role in the life cycle of threatened and endangered bird species.

DESCRIPTION OF BOLIVAR FLATS SHOREBIRD SANCTUARY

Houston Audubon Society's 1,205-acre, Bolivar Flats Shorebird Sanctuary is an exceptionally productive complex of mud flats, salt marsh, uplands, and gulf-front beach. This ideal combination of habitats provides resting, feeding, and/or breeding sites for hundreds of thousands of birds each year. Bolivar Flats' special importance to 25 species of shorebirds prompted its designations as, an "Important Bird Area" by the *American Bird Conservancy* and the *National Audubon Society*, and a "Site of International Importance" by the *Western Hemisphere Shorebird Reserve Network*. Of particular significance are the large numbers of federally threatened Piping Plovers and Red Knots which use this area as a migratory stop-over and wintering location, and a known breeding location for federally threatened Black Rails. This area is also heavily used as a feeding area by thousands of

threatened Piping Plovers and Red Knots which use this area as a migratory stop-over and wintering location, and a known breeding location for federally threatened Black Rails. This area is also heavily used as a feeding area by thousands of wading birds including Roseate Spoonbills and state-threatened Reddish Egrets. Large numbers of Brown Pelicans roost on the mud flats and feed in the adjacent waters. Nelson's Sparrow and Seaside Sparrows, both on the *Partners in Flight Watch List* because of their restricted ranges, can be found in the sanctuary.

The sanctuary uplands are made up of coastal prairie interspersed with many seasonal freshwater ponds. These areas provide good-quality habitat for grassland birds and nesting habitat for Mottled Ducks a *National Audubon Watch List* species.

In addition to the value of this area as bird habitat, there is a significant contribution to the local economy by the thousands of bird watchers from all over the world who visit the area each year. Bolivar Flats' productive marshes also provide food for large numbers of fish and other sea life which provide recreational opportunities for fishermen who catch redfish, speckled trout and flounder, and for families who come to catch blue crabs and enjoy the beach. The sanctuary also plays an important role in ecosystem resilience, community protection and equity matters related to public access.

This sanctuary and the wildlife that depend on it will be directly impacted by this proposed project, and it is the U.S.A.C.E. responsibility to consider all impacts to the ecosystem both direct and indirect, singly and cumulative. Our specific concerns are as follows.

PROJECT CONCERNS:

1. The applicant's proposal to fill 0.72 acres of dune swale wetlands violates the 404(b)(1) Guidelines of the Clean Water Act. Specifically, the purpose of the guidelines is to restore and maintain the chemical, physical and biological integrity of waters of the United States through the control of discharges of dredged or fill material. It is clear that this proposed project violates the 404(b)(1) guidelines and should not be permitted. Specifically, the proposed project is not water dependent. According to the guidelines, practicable alternatives are presumed to be available and all practicable alternatives to this proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem.
2. Storm water runoff from the proposed development will flow into sanctuary wetlands. This runoff may contain herbicides, automobile petroleum products, insecticides, fertilizers and pet waste leading to contamination of sanctuary wetlands and decreasing wetland productivity.
3. Buildings, paving of streets and sidewalks will increase the amount and speed of storm water draining into sanctuary wetlands. The developer has not addressed these hydrological changes in their mitigation plan.
4. The 0.72 acres of wetlands to be filled on site are part of the dune/swale complex that provides a clean freshwater supply for wildlife. The availability of clean freshwater in coastal systems is extremely difficult to replace.

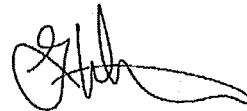
5. Use of mosquito control chemicals in the development would damage sanctuary wetland productivity, eliminating food for birds and other wildlife.
6. Placing the infrastructure to support a residential development along Rettilon Road will impact jurisdictional wetlands adjacent to the road. These shallow wetlands are important wildlife habitat, and these infrastructure projects will also require permits for which the U.S.A.C.E. has not reviewed and approved.
7. The proposed discharge activities and development are located in an area that has been designated as critical habitat for endangered over-wintering Piping Plovers. Increased traffic on the beach (golf carts, dogs, and people) will result in increased disturbance of Piping Plovers and the thousands of other birds that use the beach.
8. The close proximity of the proposed activities and subsequent development to a known breeding population of federally threatened Black Rails warrants further investigation into potential negative effects caused by a development before a permit is issued.
9. Endangered Kemp's Ridley Turtles are known to nest on the Bolivar Peninsula. Increased beach traffic and development lighting have the potential to negatively impact turtle nesting.
10. Rettilon Road is bordered by wetlands and regularly floods during extreme high tides and storm events. Development residents will find this inconvenient and ask that the road be elevated. Road construction will negatively impact adjacent wetlands.
11. The proposed discharge activities and development are located seaward of the proposed Coastal Spine project. In the inevitable event of a major hurricane, debris and a wide array of pollutants from the development are likely to impact the critical wetland habitats adjacent to the project. In addition, if the Corps of Engineers issue this permit it will be knowingly placing future residents in harm's way and contributing to the potential loss of life.
12. The applicants plan shows fill material, but does not specify a source. We have concerns that the fill material has the potential to harbor seeds and/or plant material from non-native invasive species which would pose a threat to nearby natural resources.
13. A review of aerial imagery from this location shows previous filling of wetlands. Wetland areas created by Hurricane Ike in 2008 were filled circa 2014. Whether U.S.A.C.E. permitted these activities are unclear. If so, Houston Audubon was not given notice during the public comment period, and any additional destruction of wetlands should be rejected.

Houston Audubon requests the Corps of Engineers deny Permit Application No. SWG-2007-00321. The cumulative losses to critical wetland and coastal prairie habitats on the Bolivar Peninsula have magnified the importance of Bolivar Flats Shorebird Sanctuary as the largest intact wetland/prairie ecosystem complex in the area. Allowance of further development immediately adjacent to this important natural resource would be irresponsible and any dismissal or lack of consideration of the potential harm this development will have on human life would be negligent. At the least, Houston Audubon requests an Environmental Impact Assessment be conducted concerning this project that will have far-reaching effects on one of our region's most valuable environmental assets. We also request that the Corps of Engineers consider its own stated values related to ecosystem resilience and community protection when assessing this permit application.

Sincerely,



Helen Drummond
Executive Director



Greg Whittaker
Board President