



# United States Department of the Interior



National Park Service

Midwest Region  
601 Riverfront Drive  
Omaha, Nebraska 68102-4226

October 16, 2007

26-00568(MWR-P/G)

Mr. Jim Wood  
Manager, Grants Management  
Michigan Department of Natural Resources  
P.O. Box 30425  
Lansing, Michigan 48909-7925

Dear Mr. Wood:

This correspondence is in response to the city of Benton Harbor's request for National Park Service (NPS) approval to convey control and tenure for 22.11 acres of Jean Klock Park to Harbor Shores Community Redevelopment, Inc. (HSCRI). This park was developed with assistance from the Land and Water Conservation Fund (L&WCF) under grant 26-00568 entitled Jean Klock Park Bathhouse. The purpose for this conveyance is to allow Benton Harbor to perpetually lease the subject 22.11 acres to HSCRI for the placement of 3 holes of an 18-hole golf course. Based upon our review of the information provided, we are denying the city's request. Following is the basis for our decision:

## Control and Tenure

As our independent analysis progressed, one of the overarching concerns was measuring the full extent of the conversion. While the perpetual lease of 22.11 acres creates the obvious and documented conversion scenario, it is our opinion that the control and tenure of the entirety of Jean Klock Park and that of all of the proposed replacement lands have also been conveyed from Benton Harbor to HSCRI or one of its affiliates.

We direct your attention to Article II, Section 2.01 of the document entitled *Harbor Shores Golf Course Agreement (Agreement)*, under which Benton Harbor leases to HSCRI the "Interior Park Property." The "Interior Park Property" is generally described as comprising 22.11 acres and is specifically defined under Article I, Section 1.01(f) as:

*"Interior Park Property means the improvements to be constructed by Harbor Shores necessary to maintain and operate three (3) golf holes of a public golf course on the Interior Park Property according to the standards set forth in Exhibit H and Exhibit I thereto."*



Also referenced in Section 2.01 and incorporated as a part of the *Agreement* is *Exhibit E Harbor Shores Golf Course Agreement Access Rights*. Under *Exhibit E*, Benton Harbor further grants and conveys to HSCRI a perpetual easement across Jean Klock Park and the proposed replacement properties for:

*“allowing the construction, installation, operations, evacuation, inspection, replacement, repair, maintenance and removal of the Interior Park Improvements, for the purpose of allowing the construction, installation and inspection of the Park Improvements, for the purpose of allowing the construction, installation and inspection of the Parcel 8A and Park Expansion Improvements, for the purpose of ingress to and from the public course, and for the purpose of its maintenance obligations detailed in Exhibit F (which includes, but is not limited to, the following: sand and dune maintenance; trash removal, cleaning of public restrooms, grass mowing and related landscaping, trimming and maintenance, and other customary park maintenance items) (the “Access Rights Easement”).”*

It is further stated in *Exhibit E*:

*“The Access Rights Easement shall be for the use of Harbor Shores and its tenants, agents, employees, contractors, subcontractors, invitees, licensees, guests, customers, successors and assigns.”*

Further, the final paragraph in *Exhibit E* references an easement agreement specifically related to the construction, operation, and maintenance of marinas and associated recreational facilities that will be built on or adjacent to the parcel H replacement property. The *Exhibit P Harbor Shores Golf Course Agreement Form Covenant Deed and Easement Agreement* includes as attachments (1) the covenant deed for replacement parcel H [actually 2 separate parcels referred to as H east and H west totaling 3.41 acres]; (2) an easement agreement relating to the 3.41 acre replacement property; and, (3) a summary of the golf course agreement. From reviewing these documents, we understand:

1. The covenant deed conveys and transfers the 3.41 acres comprising replacement parcel H from HSCRI to Benton Harbor.
2. The easement agreement conveys from Benton Harbor to the Cornerstone Alliance (Cornerstone) and its successors, assigns, customers, employees, agents, invitees, guests, contractors, tenants, and subtenants, a perpetual non-exclusive easement over, across, through, and under the 3.41-acre replacement parcel H in order to permit:
  - a) access to Lake Michigan, the St. Joseph River, and the Paw Paw River;
  - b) construction, installation, and inspection of improvements to parcel H;
  - c) construction, installation, operation, inspection, replacement, repair, maintenance, and removal of public or private utilities, and gas and fuel lines for refueling watercraft upon parcel H;
  - d) construction, installation, operation, evacuation, inspection, replacement, repair,

- maintenance, and removal of any portion of the Harbor Shores Project upon or near parcel H;
- e) construction, installation, operation, inspection, replacement, repair, maintenance, and removal of the private marinas, docks, and related improvements as further detailed in this easement; and,
  - f) ingress and egress to and from the Cornerstone property and any of its improvements (e.g., private marinas, docks, and related improvements).
3. The easement agreement conveys from Benton Harbor to Cornerstone and its successors, assigns, customers, employees, agents, invitees, guests, contractors, tenants, and subtenants, a perpetual exclusive easement over, across, through, and under the 3.41-acres replacement parcel H in order to permit:
    - a) docking and mooring of watercraft, sunbathing, lounging, and picnicking by Cornerstone or its Affiliates;
    - b) construction, installation, operation, evacuation, inspection, replacement, repair, maintenance, and removal of docks, wharfs, and/or marinas adjacent to replacement parcel H;
    - c) fishing, swimming, waterskiing, bathing, watercraft navigation or mooring, and all other related recreational activities by Cornerstone or its Affiliates; and,
    - d) loading and unloading watercraft and/or other supplies and passengers by Cornerstone or its Affiliates.
  4. The easement agreement prohibits Benton Harbor from using replacement parcel H for any of the purposes stated above.
  5. The easement agreement requires that Benton Harbor must keep replacement parcel H open and unobstructed by any building, fences, trees, barriers, or other structures or improvements that would prohibit Cornerstone or its Affiliates access over, across, through, or under parcel H.

We now direct your attention to *Agreement* Article II, Section 2.08, in which Benton Harbor grants a utility easement to HSCRI over, across, and under Jean Klock Park for the construction, installation, operation, inspection, replacement, repair, maintenance, and removal of public or private utilities.

Finally, we direct your attention to *Agreement* Article VII, Section 7.12, which allows Harbor Shores to assign this agreement or any interest therein as collateral security or create a sublease by way of mortgage of HSCRI's leasehold interest.

In summary, we believe the subject *Agreement* in effect transfers perpetual control and tenure of the entire Jean Klock Park and the proposed replacement lands from Benton Harbor to HSCRI or its Affiliates.

#### Replacement Lands

It is our opinion that the proposed replacement lands fail to meet the basic L&WCF eligibility

requirements, specifically the equal utility requirement. Property to be converted must be evaluated in order to determine what recreation needs are being fulfilled by the types of outdoor recreation resources and opportunities available. The property being proposed for substitution must then be evaluated in a similar manner to determine if it will meet recreation needs which are at least like in magnitude and impact to the user community as the converted site. Further, the replacement lands must have clear and immediate public access and use and constitute a viable recreation area. Although the city's proposal refers to the replacement lands being linked together, we see no connectivity to other park units. We also do not believe that any parcel is self sufficient as a viable park or recreation unit. Accordingly, the proposed replacement package comprising 42.57 acres is insufficient in magnitude, capacity, and viability to mitigate the subject 22.11 acre or any larger conversion.

### Environmental Analysis

Although numerous meetings over the past several years included a discussion regarding the role of Jean Klock Park within HSCRI's overall project entitled "Harbor Shores," we can find no evidence that the public was accorded a minimum 30-day period during which they could provide comments specific to the environmental analysis of the subject conversion and replacement proposals. Consequently, before the NPS can finalize compliance with the National Environmental Policy Act this opportunity must be made available.

### Appraisals

Initially, we were concerned that the appraisals met requirements for approval under the *Uniform Appraisal Standards for Federal Land Acquisition*. In general, appraisals must evaluate a property under its highest and best economic use. However, it is my opinion that the January 27, 2004, Berrien County Circuit Court *Consent Judgment and Permanent Injunction* precludes this requirement. Accordingly, the use of a recreational highest and best use for the Jean Klock Park property is substantiated and acceptable in this matter.

### Summary

The above issues have been somewhat unusual in complexity, and we thank you for your patience as we completed our review. For your information, we invited several subject matter experts within the NPS to comment on our conclusions and they are in agreement on each. As stated above, our rejection is on the basis of the existing proposal. As you know, you have the option to revise the original proposal and resubmit at a later date. If you choose that option, we would recommend that prior to a formal resubmission you contact Jim Krejci or Bob Anderson for a detailed discussion on each of the above issues as well as all other prerequisites for conversion approval. Mr. Krejci may be contacted at 402-661-1560 and Mr. Anderson at 402-661-1540.

Because we cannot approve the subject conversion and associated L&WCF amendment, we are returning the entire conversion package.

Sincerely,

A handwritten signature in black ink, appearing to read "Ernest Quintana". The signature is written in a cursive style with a large, prominent initial "E".

Ernest Quintana  
Regional Director

Enclosure