UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUL 19 2017

Oleta Partners, LLC
Ms. Kerri Barsh
Greenberg Traurig, P.A.
33 S.E. 2nd Avenue
Miami, Florida 33131

Mr. Larry M. Spring, Jr.
City Manager
City of North Miami
776 NE 125th Street
North Miami, Florida 33161

Re: Munisport-City of North Miami Section 404(c) Determination
Sole Mia Miami Development

Dear Mr. Spring:

Oleta Partners LLC, a joint venture between LeFrak and Turnberry Associates (Developer), has proposed a new 184-acre development on the footprint of the inactive municipal solid waste landfill in North Miami, Florida, which was the subject of the January 19, 1981, Clean Water Act Section 404(c) Final Determination (Determination). That Determination placed restrictions on what further actions could occur on the landfill footprint, with the primary goals being closure of the landfill through capping and leachate controls and the construction of a berm between the footprint of the landfill and the adjacent mangroves. The protection of the adjacent mangrove system was also the subject of the Determination in the form of a specific prohibition against the placement of any discharge of dredge or fill material into the mangrove system and the requirement of measures to address concerns about leachate leaving the landfill. As discussed below, the Developer has asked the Environmental Protection Agency whether the proposed development could be constructed under the restrictions and prohibitions identified in the Determination without modifying the Determination. The EPA Region 4 conducted a review of the information provided by the Developer in coordination with the EPA's Office of Water. Based on this review, the EPA has concluded that the development as currently proposed may be constructed in accordance with the restrictions and prohibitions in the Determination. Detailed comments on the compatibility of the development as proposed with the determination and a copy of the Determination are enclosed for your reference.

The Section 404(c) Determination was issued in response to permit 75B-0869 and a subsequent related permit application, 77B-0376, which would have authorized the discharge of dredge or fill material to construct a golf course on what is now the landfill as well as the northern part of the adjacent mangrove system. Upon the discovery that the original site was being used for a landfill, the EPA took steps under Clean Water Act Section 404(q) to oppose the modification of the permit, ultimately issuing the

Determination. The Determination is somewhat unique in that, in addition to specific prohibitions and restrictions of activities on the site, it authorizes specific activities that can take place on the footprint of the solid waste landfill area with the goal of closing the landfill. This includes authorizing the placement of clean fill to cap the landfill, the construction of a berm along the face of the landfill, and the installation of a leachate collection system. In addition to these restrictions the Determination included a prohibition against any activities in the mangroves with the exception of removing a dike that segregates the mangrove system and placement of the removed material in the adjacent historic borrow area.

In addition to the Determination, the Munisport Site is subject to landfill closure permits issued by both the Florida Department of Environmental Protection (FDEP) and Dade County Environmental Resource Management (DERM) as well as Administrative Orders on Consent with both FDEP and DERM related to the closure of the landfill and hydrologic restoration of the northern altered mangrove system.

As noted above, the Developer has proposed a mixed use residential/commercial development based on a master plan for the site and has asked the EPA whether these activities would be consistent with the restrictions and prohibitions in the Determination. On May 10, 2017, the Developer met with the EPA and provided a presentation which included a rendering of the proposed plan. A copy of the proposed plan is enclosed. The proposed plan includes high-rise residential buildings, a large amenity pond, and commercial areas along with the associated infrastructure including roads, parking, activity parks and greenspace areas. The Developer does not propose any activity in or impacting the mangroves and has indicated that protecting the mangrove system is important to the developmental concept. At this point, consistent with the Determination, the shallow depressions on the surface of the landfill and the deeper pond have been filled with clean fill, and the primary road through the proposed development has been constructed. The amenity pond is in the development stage. It is the EPA's understanding that the balance of the plan is conceptual.

An initial step in the development process required closing the landfill in accordance with the FDEP and DERM closure permits. The requirements of both permits are similar and include, among other requirements, capping the landfill, the installation and operation of a ground water extraction well system along the perimeter of the landfill to capture any leachate leaving the landfill, and deep well injection of the collected leachate in a Class 1 permitted injection well. Closure of the landfill and prevention of the leachate from migrating away from the landfill were specifically authorized in the list of restrictions in the Determination.

As described in the detailed enclosure, the EPA believes the proposed development activities may be constructed consistent with the goals and requirements of the Section 404(c) Determination without modifying the Determination, which will remain in effect. The Determination, Section B, "Restrictions," (Page 12) lists the activities that are restricted and other activities that are allowed under the Determination. The clear purpose of the Restrictions are "… to prevent additional unacceptable adverse effects to fishery areas, wildlife and recreation areas of Biscayne Bay, adjacent wetlands and lakes within the site." Site is defined in a footnote as "that portion of the North Miami landfill which is 'waters of the United States.'"

In conclusion, the EPA finds that the proposed development is consistent with the restrictions and prohibitions of the Section 404(c) Determination and can proceed. The EPA appreciates the efforts of the Developer and the City of North Miami to address the requirements of the Determination. We also recognize and appreciate that the restoration of this area will provide benefits to the community and the adjacent mangrove systems. If we may be of further assistance, please feel free to contact Mr. Philip Mancusi-Ungaro in the Office of Regional Counsel at (404) 562-9519 or Mr. Ron Miedema at (561) 616-8741.

Sincerely,

V. Anne Heard

V. Anne Heard
Acting Regional Administrator

Enclosures

cc: Mr. Craig Grossenbacher
Miami-Dade County Environmental Resources Management

Mr. Donald Kinard
Army COE

EPA Detailed Comments
City of North Miami, Munisport Section 404(c) Final Determination
Sole Mia Miami Development

As noted in the cover letter, the Section 404(c) Final Determination (Determination) was issued in response to Section 404 Permit 75B-0869 and a subsequent related permit application, 77B-0376, which would have authorized the discharge of dredge or fill material to construct a golf course on what is now the landfill as well as the northern part of the adjacent mangrove system. Upon the discovery that the original site was being used for a landfill, the EPA took steps under Clean Water Act Section 404(q) to oppose the modification of the permit. When discussions with the U.S Army Corps of Engineers failed to resolve the matter, the EPA initiated and ultimately finalized the 404(c) process and restricted and prohibited certain activities from occurring on the site and in the adjacent mangroves.

The Determination is somewhat unique in that in addition to specific prohibitions and restricting activities on the site, it authorizes specific activities that can take place on the footprint of the solid waste landfill area with the goal of closing the landfill. This includes authorizing the placement of clean fill to cap the landfill, the construction of a berm along the face of the landfill, and the installation of leachate collection system. In addition to these restrictions the Determination included a prohibition against any activities in the mangroves with the exception of removing a dike that segregates the northern altered mangrove system from the mangrove preserve and placement of the removed material in the adjacent historic borrow area.

The first restriction in the Determination specifies "[t]hat no additional solid waste (including garbage) shall be deposited on the areas covered by permit 75B-0869 and permit application 77B-0376 that are waters of the United States." The EPA understands that there has been no additional solid waste placed at the site since the issuance of the Determination and there are no future plans for discharging any solid waste on the site.

The following is a list of activities planned by the Developer and the associated provisions in the Section 404(c) Determination that would allow the activity to move forward.

1. <u>Developing the landfill area.</u>

   As part of the mixed use development, clean fill will be deposited to cap the landfill. The proposed plan includes high-rise residential buildings, a large amenity pond, and commercial areas along with the associated infrastructure including roads, parking, activity parks and greenspace areas. Since all of these activities will use "clean fill" and serve to cap the landfill, these activities are consistent with the restrictions set out in the Determination. As described below, there are specific provisions in the Determination that would allow these activities to take place.

   Section IV.B.2, Page 13, of the Determination anticipates that clean fill will be placed on the "entire area already filled with solid waste" to cap the site. This paragraph also describes the location where the clean fill may be obtained and limits on site excavation for this purpose to 19 acres of shallow lakes (less than 6 feet MSL).

   Section IV.C, Pages 16-17, describes the reasons for restrictions of the Determination and states that "there is no need to extend this restriction of the discharge of clean fill to those areas which have already been filled. First, because those areas have already been filled,

> they are no longer functioning as wetlands. Second, as noted above, clean fill will not cause the leachate problems presented by the solid waste. Third, the placement of such a capping will be beneficial because it will lessen the erosion of the solid waste and divert some rainwater. Finally, placement of such clean fill was a condition of the State solid waste permit. No environmental purpose would be served by preventing compliance with the State's remedial condition." The Determination also states on Page 16, that there are no specific limitations on the depth of the clean fill that could be placed in the landfill. The Determination notes: "I have not adopted that requirement, first because the nature of my action is not so much to prescribe the actions which must be taken as to prescribe conditions under which they may be done, and second because I see "no need to limit the level of this clean fill to a maximum depth to prevent unacceptable effects on fishery, wildlife and recreational areas."

In light of this language, the EPA has previously taken the position that construction of a proposed amphitheater in the 1990's using clean "fill" materials would be consistent with that restriction. The amphitheater was never built. However, the proposed activities would fall under the same analysis. The only difference would be the extent of coverage.

In sum, the construction of the development on top of the old landfill would be consistent with the restrictions place on the landfill in the Section 404(c) Determination.

2. <u>Excavation of landfill material</u>.

Excavation is not specifically contemplated in the Section 404(c) Determination except for limited borrow material to cap the landfill. However, one of the underlying goals of the Determination was to control leachate contamination from the landfill from entering the adjacent mangrove system and the nearby bay.

> Section IV.C, Page 15 describes the basis for restricting all future discharges to clean fill: "The record demonstrates that the placement of solid waste creates a serious leachate problem due to the particular geological and hydrological characteristics of the site." Further, in prohibiting the discharge of additional fill into the mangroves, the Determination notes; "While, initially, the EPA had no objection to the issuance of a permit for the filling of this area [the mangroves] with clean fill, the changed circumstances attributable to the subsequent use of solid waste <u>make the cumulative effect of filling this approximately 60 acre wetland more significant.</u> <u>Prohibiting filling of these wetlands will help attenuate the stresses which have already been suffered by the fish and wildlife of the area and will continue to occur as a result of the garbage now in place." (emphasis added).</u>

Since one of the primary purposes of the Determination is to protect and restrict the impacts that are occurring to the mangroves and the adjacent bay, including both leachate and surface runoff, the EPA believes that removing the source of that contamination is consistent with the goals of the Determination.

Further, the FDEP and the DERM have issued permits to close out the landfill which authorizes excavation of some of the solid waste. This includes restriction on how the excavation can be

implemented. Excavating the existing solid waste, and properly disposing of it, is consistent with that goal.

3. Managing stormwater leaving the site.

The Determination was issued, in part, to protect the mangrove system from direct impacts by not allowing any fill in the system. The Determination also focused on indirect impacts such as leachate transport and surface runoff by allowing the construction of a berm between the landfill and the mangrove system to control runoff from the landfill.

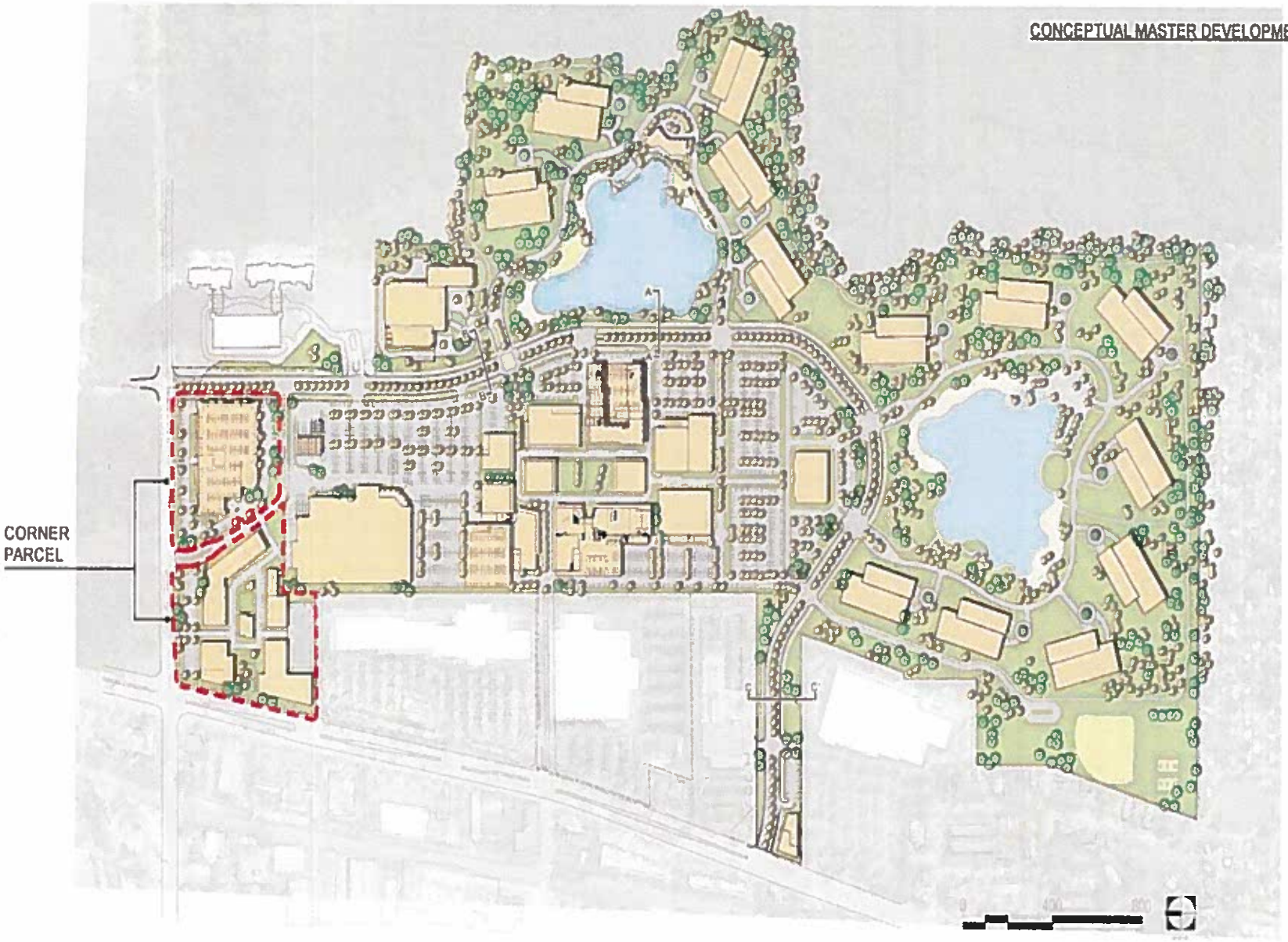
> Section IV.C, Page 18, states "...the net effect of placement of fill in the form of a dike around the periphery of the existing disposal area (that is the area which has already been filled), would not have unacceptable adverse effects, but would rather be beneficial because of the potential for retaining surface runoff. ... The data suggest that the existing dike, while not totally effective, does slow down the passage of leachate."

As a condition of the permits required for the development, the Developer will construct a stormwater management system that is comprised of stormwater retention areas and drainage wells to collect and dispose of the runoff. The mass-graded site will generally slope toward the perimeter of the property where swales will provide water quality treatment prior to subsurface infiltration. At a minimum, the 25-year, 3-day storm event will be retained without direct discharge to the mangroves. Based on this design the EPA believes the steps taken to manage the stormwater runoff from the development to prevent impacts to the mangroves and the Bay is consistent with the goals and requirements of the Determination.

4. Filling in deep lakes on landfill.

Although the Determination specifically did not authorize the filling of the deeper lakes in the landfill, the discussion in Section III.A. notes that the deeper lakes were dug through the solid waste and into the aquifer.

> Section III.A., Page 5, specifically states "that placement of the solid waste on the site has resulted and will result in significant leaching into these lakes, the adjacent [mangrove] wetlands, the water table which connects with Biscayne Bay, and ultimately the Bay itself." Following the Determination, inspections conducted during the 1980's continued to demonstrate leaching into these lakes.

Although the Determination does not specifically authorize or require filling the deep lakes, the negative impacts associated with the existence of the lakes supports filling the lakes with clean fill and bringing the surface to grade to support the goals and requirements of the Determination.

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