



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P. O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

OCT 22 2009

Planning, Programs, and
Project Management Division
Environmental Planning
and Compliance Branch

Mr. Lawrence E. Starfield
Deputy Regional Administrator
US Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Mr. Starfield:

The purpose of this letter is to follow up on the discussion you had with Lt. Colonel Jernigan on October 9, 2009, concerning encroachments into the Jean Lafitte National and Historical Park property in the Bayou aux Carpes unit (JLNHP) by Gulf Intracoastal Constructors (GIC). Gulf Intracoastal Constructors is a contractor hired by the US Army Corps of Engineers (Corps) to construct a portion of the Greater New Orleans Hurricane and Storm Damage Risk Reduction System. As you are aware, the Bayou aux Carpes is designated by the Environmental Protection Agency (EPA) as a Clean Water Act 404(c) area. During the phone call on October 9, 2009, we promised to provide in writing a description of what happened, why it happened, and what steps the Corps and its contractors were taking to ensure that no further encroachment would occur. We take our commitment to the EPA, the National Park Service (NPS), and the nation to avoid impacts to the 404(c) area very seriously and up until this event believed that we had taken adequate precautions in requiring the contractor's avoidance of impacts to the 404(c) area. As you will read in this letter, we are taking additional measures to ensure that this type of event does not occur again.

What happened: The Corps acquired rights to a parcel of property within the JLNHP that was 100 feet by 4,200 feet. Gulf Intracoastal Constructors was to begin clearing of the property in 30-foot swaths starting at the eastern edge and working further to the west with each pass. Approved plans called for only 90 feet of the property to be cleared, thus leaving a 10-foot buffer of undisturbed property between the Corps project site and the NPS boundary. After the first 30-foot swath was cleared, the contractor's plan was to stake off the 10-foot boundary line every 50 feet. This was to be done to give the clearing crew a distinct "do not cross" boundary. The contractor's surveyor did not place stakes along the 10-foot buffer as planned, but instead offset the stakes in the area cleared during pass number 1. A tree clearing machine operator was making the second pass when the encroachment occurred. Since the stakes had been offset, the operator did not have a hard visual line to follow. The encroachment was discovered by the contractor's survey crews as part of their daily survey effort. Upon discovery of the

encroachment, clearing work was halted and the Corps on-site Construction Division staff was notified. Additional surveys, conducted since October 8, 2009, have discovered that a total of six encroachments occurred. Encroachments range in size from 9 square feet (sq. ft.) to 785 sq. ft. and resulted in a total of 1,750 sq. ft. of NPS property being adversely impacted. The area impacted is designated as part of the 404(c).

Steps being taken to prevent future encroachments: A plan has been developed by GIC where the contractor will put in place a solid line of temporary construction fencing along the entire 4,200 linear foot of the project site at the 10-foot do not cross boundary. This fencing will be installed prior to land clearing operations starting again. After installation of the fencing, the contractor will provide a survey drawing indicating the actual area cleared, and we will provide EPA and NPS with copies. Our expectation at this time is that total land cleared for this work will be less than the 9.7 acres approved by the EPA in your modification to the Bayou aux Carpes 404(c) final determination. Fencing will be maintained by the contractor until all construction activities in the area are completed.

In addition to the physical marking of the boundary, New Orleans District (CEMVN) Environmental staff will meet with project staff again and reemphasize to them the importance of the 404(c) program, the sanctity of the 404(c)/NPS boundary, and the absolute necessity that no additional encroachments occur. The Senior Project Manager, Kevin Wagner, will hold a similar meeting with GIC's senior leadership. On site CEMVN Construction Division staff will emphasize the importance of this issue during future team meetings with GIC staff and will provide a full time inspector for the remainder of the clearing operation.

Site Restoration: The area to be restored is 1,750 sq. ft. and will be restored by GIC with oversight by the NPS, EPA, and the Corps. Based upon discussions, GIC's preliminary restoration plans will consist of the following: leveling the existing ground, as needed, with the use of hand tools to remove any ruts, mounds, or irregularities created by heavy equipment that entered the area; GIC will plant appropriate bottomland hardwood trees, approximately three gallons in size on ten foot centers with appropriate predator guards installed. Approximately 70 trees will be planted in the impacted areas. Tree species and specific planting locations will be determined by GIC in cooperation with the NPS, EPA, and CEMVN Environmental staff. Gulf Intracoastal Constructors is to finalize a site restoration plan and present it for approval by NPS and EPA.

It is also our understanding that GIC's plans will be to complete a restoration report one year after the restoration effort is complete to document the success of the plantings. If success rate is below the percentage approved by the NPS, additional restoration work will be completed to meet the plan objectives.

Temporal Mitigation: Gulf Intracoastal Constructors, in consultation with the NPS and EPA, will determine the proper compensatory mitigation required for this violation. All mitigation efforts are to be completed on NPS property. The contractor will complete the required compensatory mitigation according to the approved NPS/EPA plan and submit written documents to the Corps documenting the plan and demonstrating that the plan has been completed as per the agreement with the NPS.

If you have any questions or concerns, please contact Ms. Joan Exnicios at: US Army Corps of Engineers, CEMVN-PM-R, Attn: Ms. Joan Exnicios, Chief of the Environmental Planning and Compliance Branch, P.O. Box 60267, New Orleans, Louisiana, 70160-0267. Ms. Exnicios can be contacted by E-mail: joan.m.exnicios@usace.army.mil or by phone at (504) 862-1760.

Sincerely,

A handwritten signature in cursive script that reads "Alvin B. Lee". The signature is written in black ink and is positioned above the typed name and title.

Alvin B. Lee
Colonel, US Army
District Commander

Copy Furnished:

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