



UNITED FOR A HEALTHY GULF

330 Carondelet Street, 3rd, New Orleans, LA 70130
Phone: 504.525.1528 Fax: 504.525.0833

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Kara Vick
United States Army
Corps of Engineers
New Orleans District
Regulatory Branch
Post Office Box 60267
New Orleans, LA 70160-0267
504 862 2279

kara.vick@usace.army.mil

Elizabeth Hill
State of Louisiana
Department of Environmental
Quality
Office of Environmental Services
Water Quality Certifications
Post Office Box 4313
Baton Rouge, LA 70821-4313
225 219 3225

Elizabeth.Johnson@la.gov

Amelia Wolfe
State of Louisiana
Department of Natural
Resources
Office of Coastal Management
Permit and Mitigation Division
Post Office Box 44487
Baton Rouge, LA 70804-4487

Amelia.wolfe@la.gov

RE: **MVN 2017-00569-EV** - Lafitte Crown Point Levee in Jefferson Parish (**WQC 180416-01**)
P20170667

Dear Ms. Vick, Ms. Hill, and Ms. Wolfe,

I am writing on behalf of Gulf Restoration Network (“GRN”), a diverse coalition of individual citizens and local, regional, and national organizations committed to uniting and empowering people to protect and restore the natural resources of the Gulf of Mexico. We have serious concerns about the application for a Section 404 Permit (**MVN 2017-00569-EV**) and Water Quality Certification (**WQC 180416-01**) and Coastal Use Permit (**P20170667**) submitted to the United States Army Corps of Engineers (“Corps”) and Louisiana Department of Environmental Quality (“LDEQ”), and Louisiana Department of Natural Resources (“LDNR”), respectively, by Lafitte Levee District (“Applicant”).

The Applicant requests Section 404 permitting and a Water Quality Certification (“WQC”) and a Coastal Use Permit (“CUP”) for its proposed construction of a ring levee system to provide tidal protection measures to Crown Point, Louisiana (“Project”). The Project would have a direct footprint of 6.02 acres of bottomland hardwood, but would enclose over 175 acres of bottomland, including much of a federally owned 404c area. While we are not opposed to flood protection projects, the present alignment encloses too many irreplaceable coastal forest wetlands. It warrants an EIS, and we are concerned about the induced development of wetlands behind the levee, in contradiction with the language in the State Master Plan.

The applicant should withdraw its current application and submit a Notice of Intent to conduct an Environmental Impact Statement (“EIS”) Although the Applicant also proposes to buy credits from a mitigation bank to offset any unavoidable losses to wetland functions caused by project implementation, we are concerned that there are no mitigation banks that would replace the uniquely protected and uniquely public coastal forests enclosed by this proposal.

GRN opposes the Applicant’s request for a Section 404 Permit and WQC and CUP, and we ask The Corps and LDEQ *and* LDNR to deny this request based on the following concerns:

1. The Project is inconsistent with Louisiana’s Comprehensive Master Plan for a Sustainable Coast and a 2016 Executive Order.

Disrupting these wetlands directly conflicts with Louisiana’s restoration and community-protection goals. The *Comprehensive Master Plan for a Sustainable Coast* (“Master Plan”) clearly states that valuable wetlands must be preserved.

One of the key assumptions of 2007’s Master Plan is that “a sustainable landscape is a prerequisite for both storm protection and ecological restoration.”¹ And in 2012’s iteration, these land-use specifications were further clarified:

We do not want construction of new hurricane protection systems to encourage unwise development in high risk areas, as has occurred in the past. Such development increases overall levels of risk and diminishes the effectiveness of the protection structures themselves. This phenomenon is called “Induced Risk,” and it runs counter to the master plan’s objectives of sustaining wetland ecosystems and reducing the flooding risks borne by coastal communities. *Similarly, wetland areas inside the hurricane protection system need to remain intact and undeveloped* [emphasis added].²

Filling in these wetlands removes both the ecosystem and flood-protection functions of these tracts of land, in direct conflict with the state’s goals. The Master Plan further states that “overall hydrology must be improved by minimizing impediments to water flow.”³ Allowing the Applicant to impact up to 175 acres of wetlands not only limits ecological function, but it also fails to minimize water-flow impediment or improve overall hydrology.

¹ Coastal Protection and Restoration Authority of Louisiana, *Executive Summary, in* LOUISIANA’S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST 3 (2007).

² Coastal Protection and Restoration Authority of Louisiana, *2012 Comprehensive Master Plan for a Sustainable Coast*, p 159).

³ *Id.*

The Louisiana Legislature approved the latest version of the Coastal Master Plan during the 2012 Regular Session,⁴ with overwhelming public support.⁵

On April 4th, 2016, Louisiana Governor John Bel Edwards gave even greater weight to the foundational recommendations laid out in the Master Plan by issuing Executive Order No. JBE 2016-09 (“Executive Order”). Like Executive Order No. BJ 2008-7 issued by his predecessor,⁶ the Governor’s mandate again requires all state agencies, departments, and offices to “administer their regulatory practices, programs, projects, contracts, grants, and all other functions vested in them in a manner consistent with the Coastal Master Plan and public interest to the maximum extent possible.”⁷ This requirement is intended to “effectively and efficiently pursue the State’s integrated coastal protection goals.”⁸

While the Executive Order strives to implement the Master Plan’s goals to preserve wetland areas, the Applicant seek a permit for their Project that will enclose 175 acres of coastal forest that protect communities from localized flooding.

This levee has been de-prioritized at the state planning level, on the basis of a cost benefit analysis in the face of the rising seas and worsening storms. GRN is not opposed to flood protection, but the de-prioritization of this levee as a concept should spur an interest in preserving the natural flood protections that already exist on site, in the form of coastal wetland forest.

LDEQ and LDNR cannot both follow the Executive Order and issue a WQC and CUP to the Applicant.

The destruction of water flow and loss of ecosystem services is contrary to the unequivocal language of the Master Plan.

2. Project Alternatives have not been addressed.

⁴ SCR No.62, 2012 Leg., Reg. Sess. (La. 2012).

⁵ Louisiana Coastal Master Plan Public Opinion Survey, Southern Media & Opinion Research, Inc. Online at <http://www.mississippiriverdelta.org/files/2012/04/2012-Louisiana-CMP-Opinion-Survey.pdf>.

⁶ See Exec. Order No. BJ 2008-7, issued 1/23/08:

http://dnr.louisiana.gov/assets/docs/conservation/groundwater/Appendix_B.pdf

⁷ See Exec. Order No. JBE 2016-09, issued 4/4/16: <http://gov.louisiana.gov/assets/ExecutiveOrders/JBE16-09.pdf>

⁸ *Id.*

In general, the regulations provide that no discharge of dredged or fill material shall be permitted: (1) if there is a practicable alternative to the proposed discharge; (2) if the discharge causes or contributes to violations of applicable state water quality standards; (3) if the discharge will cause or contribute to significant degradation of the environment; and (4) unless all appropriate steps have been taken to minimize potential adverse impacts.⁹ The Corps' regulations also require that destruction of wetlands is to be avoided to the extent practicable.¹⁰

The regulations further provide that “practicable alternatives” include “not discharging into the waters of the U.S. or discharging into an alternative aquatic site with potentially less damaging consequences.”¹¹

Publicly-available documents provide no evidence that the Applicant has engaged in a proper alternative analysis, to determine if wetland impacts can be avoided. There are many, many acres of wetlands that will be damaged by the enclosure--wetlands that have no need for a flood protection levee. The project could be much more cost effective with a smaller footprint and fewer tidal gates, if more of these coastal wetland forest acres were to be avoided.

⁹ 40 C.F.R. § 230.10.

¹⁰ 33 C.F.R. § 320.4(r).

¹¹ 40 C.F.R. §§ 230.5(c), 230.10(a).



The alternative analysis must include direct, indirect, secondary, and cumulative impacts that take into account aspects of water quality, wildlife, and flood protection. Presently, the public has not received any information as to why the Project must be sited in the Applicant's preferred alignment.

Impacts to wetland areas could obviously be minimized if the levee were re-aligned to the other side of Bayou Des Families. As noted above, a burden to show the non-existence of practicable alternative alignments rests with the Applicant, when the proposed project is located in a special aquatic habitat.

Because the Applicant has not shown the Project to be water dependent, it is then assumed under the regulations that practicable alternatives exist to aspects of the Project that impact Waters of the United States. The Applicant has failed to demonstrate adequate consideration of alternatives, or an avoidance of impacts to the maximum extent practicable. Therefore, GRN

respectfully submits that The Corps cannot issue the requested permit under Clean Water Act Section 404.

We request an adequate alternatives analysis in response to this letter, including an alignment that maximally avoids 404c forest wetlands.

3. Direct, indirect, secondary, and cumulative impacts must be fully considered.

Article IX, Section 1 of Louisiana’s Constitution provides that “the natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people.”¹²

In its ‘Save Ourselves’ decision, the Louisiana Supreme Court outlined how state agencies, as public trustees, can implement this constitutional guarantee. All agencies must determine whether a project avoids or minimizes adverse environmental impacts, balances environmental costs and benefits with economic and social factors, and consider whether alternate projects, sites, or mitigating measures would better protect the environment.¹³

Given the information available in public documents, it does not appear that USACE, LDNR or the Applicant have fully weighed the costs and benefits relevant to the Project. Direct, indirect, secondary, and cumulative impacts of the proposed wetland fill and clearing remain overlooked.

As mentioned above, the Project’s direct impact to as many as 175 wetland acres is certainly significant. There would be considerable impacts to water quality and wildlife habitat, including potential threats to threatened species.

The fill of such a large area is in violation of the federal and state anti-degradation policy. The Louisiana policy states that “administrative authority will not approve any wastewater

¹² See Article IX of Louisiana Constitution:

<http://senate.la.gov/Documents/Constitution/Article9.htm#%C2%A71.%20Natural%20Resources%20and%20Environment;%20Public%20Policy>

¹³ 452 So. 2d 1152 (La. 1984).

discharge or certify any activity for federal permit that would impair water quality or use of state waters.”¹⁴

Additionally, the Federal regulations have not been fully implemented. Per executive orders 11988 and 11990, in order to prevent impacts to wetlands certain aspects need to be analyzed. Title 18 of the Code of Federal Regulations states:

It is the policy of the Council to provide leadership in floodplain management and the protection of wetlands. Further, the Council shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing the National Environmental Policy Act. The Council shall take action to: Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction or modification of wetlands; Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative; Reduce the risk of flood loss; Promote the use of nonstructural loss reduction methods to reduce the risk of flood loss; Minimize the impact of floods on human health, safety and welfare; Minimize the destruction, loss or degradation of wetlands; Restore and preserve the natural and beneficial values served by floodplains; Preserve and enhance the natural and beneficial values served by wetlands.¹⁵

Given that the Public Notice does not thoroughly adhere to the executive order, The Corps, LDEQ and LDNR should deny the permit application.

The destruction of these wetlands, in direct opposition to the Master Plan, would further weaken the state’s storm defenses.

The Code of Federal Regulations recognizes the significance of secondary impacts from wetland destruction by emphasizing that “minor loss of wetland acreage may result in major losses through secondary impacts.”¹⁶ Where upwards of 175 acres of wetlands are involved, it is unacceptable that the Applicant offers no analysis of these probable impacts.

The cumulative impacts on storm and flood protection must also be taken into consideration. This project could incite additional construction and in turn jeopardize even more wetlands unique to this area. This activity, combined with similar wetland-destroying projects, could result in more flooding in nearby communities, *as well as degraded water quality in the 404c*

¹⁴ LA. ADMIN. CODE tit. 33, pt. IX §1109(A)(2).

¹⁵ 18 C.F.R. §725.2.

¹⁶ 40 C.F.R. §230.41.

wetlands. The whole area must be looked at as an interrelated ecological unit in order to adequately assess the true cumulative impacts.

Since the Public Notice does not assess, or even recognize, the potential direct, indirect, and cumulative impacts that will result from the impact of over 175 acres of wetlands, The Corps, LDEQ, and LDNR cannot approve this proposal as submitted.

4. The Public Notice fails to adequately describe the Mitigation Plan.

Federal law also requires the Applicant to compensate for, or mitigate, the damages resulting from the destruction of our nation's wetlands, should a permit be issued. In the public notice, there is only a vague mention of proposed plans for the use of a mitigation bank to offset any unavoidable losses to wetland functions caused by project implementation.¹⁷

We note that there do not exist mitigation banks for coastal forests that would replace wind attenuation values for Jefferson Parish.

The Corps "must ensure that adequate [mitigation plan] information is included in the Public Notice to enable the public to provide meaningful comment," providing exception only for data which is "legitimately confidential for business purposes."¹⁸ According to the joint EPA/USACE "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule," mitigation plans for all wetland compensatory mitigation projects must contain the twelve elements, including:¹⁹

- site selection criteria
- baseline information for impact and compensation sites
- ecological performance standards
- monitoring requirements

The mere mention of legally-required details does not satisfy this requirement of "adequate information" to allow "meaningful comment." Considering that localities in Coastal Louisiana have a strong public interest in minimizing the effects of storm surge and localized flooding, the nature and location of compensatory mitigation is of vital importance to those who wish to provide public comments. As just one example, canopy-cover values ought to be publically provided, given the significant impacts to forests that make up the majority of this proposal's potential wetland destruction.

For the sake of detail, further mitigation requirements in 33 C.F.R. § 332 are included below.

¹⁷[MVN 2017-00569-EV](#)

¹⁸ 40 CFR § 230.94(b).

¹⁹ 33 CFR § 322.4[c].

To satisfy the Clean Water Act, mitigation plans must provide a level of detail “commensurate with the scale and scope of the impacts”²⁰ and include the following information:

1. “A description of the resource type(s) and amount(s) that will be provided, the method of ecoregion, physiographic province, or other geographic areas of interest.”²¹
2. “A description of the factors considered during the site selection process. This should include consideration of watershed needs, onsite alternatives where applicable, and the practicability of accomplishing ecologically self-sustaining aquatic resource restoration, establishment, enhancement, and preservation at the compensatory mitigation project site.”²²
3. “A description of the legal arrangements and instrument, including site ownership, that will be used to ensure the long-term protection of the compensatory mitigation project.”²³
4. “A description of the ecological characteristics of the proposed compensatory mitigation project site.... This may include descriptions of historic and existing plant communities, historic and existing hydrology, soil conditions, a map showing the locations of the impact and mitigation site(s) or the geographic coordinates for those site(s), and other site characteristics appropriate to the type of resource proposed as compensation. The baseline information should also include a delineation of waters of the United States on the proposed compensatory mitigation project site.”²⁴
5. “A description of the number of credits to be provided, including a brief explanation of the rationale for this determination,” including “an explanation of how the compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.”²⁵
6. “Detailed written specifications and work descriptions for the compensatory mitigation project, including, but not limited to, the geographic boundaries of the project; construction methods, timing, and sequence; source(s) of water, including connections to existing waters and uplands; methods for establishing the desired plant community;

²⁰ 33 C.F.R. § 332.4(c).

²¹ 33 C.F.R. § 332.4(c)(2).

²² 33 C.F.R. § 332.4(c)(3).

²³ 33 C.F.R. § 332.4(c)(4).

²⁴ 33 C.F.R. § 332.4(c)(5).

²⁵ 33 C.F.R. § 332.4(c)(6).

plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.”²⁶

7. “A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.”²⁷
8. “Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.”²⁸
9. “A description of parameters to be monitored in order to determine if the compensatory mitigation project is on track to meet performance standards and if adaptive management is needed. A schedule for monitoring and reporting on monitoring results to the district engineer must be included.”²⁹ The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).³⁰
10. “A description of how the compensatory mitigation project will be managed after performance standards have been achieved to ensure the long-term sustainability of the resources, including long-term financing mechanisms and the party responsible for long-term management.”³¹
11. “A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties responsible for implementing adaptive management measures. The adaptive management plan will guide decisions for revising compensatory mitigation plans and implementing measures to address both foreseeable and unforeseen circumstances that adversely affect compensatory mitigation success.”³²

²⁶ 33 C.F.R. § 332.4(c)(7).

²⁷ 33 C.F.R. § 332.4(c)(8).

²⁸ 33 C.F.R. § 332.4(c)(9).

²⁹ 33 C.F.R. § 332.4(c)(10).

³⁰ 33 C.F.R. § 332.6.

³¹ 33 C.F.R. § 332.4(c)(11).

³² 33 C.F.R. § 332.4(c)(12).

12. “A description of financial assurances that will be provided and how they are sufficient to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with its performance standards.”³³
13. The mitigation plan must provide for a monitoring period that is sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years. A longer monitoring period must be required for aquatic resources with slow development rates (e.g., forested wetlands, bogs).³⁴
14. The compensatory mitigation requirements must be clearly stated and include special conditions that “must be enforceable.” The special conditions must: “(i) Identify the party responsible for providing the compensatory mitigation; (ii) Incorporate, by reference, the final mitigation plan approved by the district engineer; (iii) State the objectives, performance standards, and monitoring required for the compensatory mitigation project, unless they are provided in the approved final mitigation plan; and (iv) Describe any required financial assurances or long-term management provisions for the compensatory mitigation project, unless they are specified in the approved final mitigation plan....”³⁵ “The special conditions must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.”³⁶
15. “The real estate instrument, management plan, or other mechanism providing long-term protection of the compensatory mitigation site must, to the extent appropriate and practicable, prohibit incompatible uses (e.g., clear cutting or mineral extraction) that might otherwise jeopardize the objectives of the compensatory mitigation project.”³⁷

A key element of a legally adequate mitigation plan is the inclusion of ecological performance standards for assessing whether the mitigation is achieving its objectives, and these are described under 33 C.F.R. § 332.5:

“Performance standards should relate to the objectives of the compensatory mitigation project, so that the project can be objectively evaluated to determine if it is developing into the desired

³³ 33 C.F.R. § 332.4(c)(13).

³⁴ 33 C.F.R. § 332.6.

³⁵ 33 C.F.R. § 332.3(k).

³⁶ 33 C.F.R. § 332.3(l).

³⁷ 33 C.F.R. § 332.7(a).

resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).”³⁸

And, further:

“Performance standards must be based on attributes that are objective and verifiable. Ecological performance standards must be based on the best available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in functional assessment methodologies, measurements of hydrology or other aquatic resource characteristics, and comparisons to reference aquatic resources of similar type and landscape position. The use of reference aquatic resources to establish performance standards will help ensure that those performance standards are reasonably achievable, by reflecting the range of variability exhibited by the regional class of aquatic resources as a result of natural processes and anthropogenic disturbances. Performance standards based on measurements of hydrology should take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Where practicable, performance standards should take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.”³⁹

The information provided on impacts and mitigation is wildly insufficient to allow for meaningful comments, especially regarding bottomland hardwoods. However, what is clear is that the federal regulations are not being followed.

To assure that minimization and mitigation in the same watershed and for the correct type of wetlands are occurring, we request that, at the minimum, mitigation banks and avoidance and minimization statements used are included in the Public Notice. Since this regulation is not followed, the Public Notice is incomplete and must be reissued with a mitigation plan.

5. The final plan, with mitigation plan included, should be made available to the public before any permits are granted.

We feel that the current Public Notice system is not adequate to fully involve the public in the Section 404 permitting process. The only items available to the public throughout the entire

³⁸ 33 C.F.R. § 332.5(a).

³⁹ 33 C.F.R. § 332.5(b).

process is the joint Corps/LDEQ Public Notice. And significantly, these documents are released before The Corps and the Applicant go through the “avoid, minimize, and mitigate” process.

The public is therefore never given an opportunity to comment on the final project, including the mitigation plan. We have often been told that many changes happen to the permits before they are issued, but the public never sees them until the wetlands have already been filled and water quality altered.

We request more information in the initial Public Notice (e.g., mitigation plans, efforts made to avoid impacts, necessity of project location, adequate alternative analysis, environmental assessments, etc.). Because this regulation is not followed, the Public Notice is incomplete and must be reissued with a mitigation plan.

6. We question whether any wetland mitigation could completely replace the functions and values lost.

Should any impacts to wetlands occur because of the Project, mitigation is required. Given the history of failure of mitigation, particularly in the New Orleans District, we feel that it would be extremely difficult to replace the function and values of this particular wetland if offsite mitigation takes place. Recent scientific literature reviews of wetland mitigation sites have described these kinds of failure in detail, but the failure is due partially to the fact that the functions of wetland soils are largely unaccounted for:^{40,41}

[O]verall lack of recovery of biogeochemical functioning may have been driven largely by the low recovery of the carbon storage and the low accumulation of soil organic matter.

A recent LSU master’s thesis has outlined the failure to replace ecological functions by the New Orleans District 404 regulatory branch.⁴² Although acreages were replaced around a 1:1 ratio, a functional analysis showed that the acreage of improved wetland needed to replace ecological functions was close to 2.4:1 for every acre destroyed.

⁴⁰ Spieles, D. J. 2005. Vegetation Development in Created, Restored, and Enhanced Mitigation Wetland Banks of the United States. *Wetlands*. 25:51-63.

⁴¹ Moreno-Mateos D , Power ME , Comín FA , Yockteng R , 2012 Structural and Functional Loss in Restored Wetland Ecosystems. *PLoS Biol* 10(1): e1001247. [doi:10.1371/journal.pbio.1001247](https://doi.org/10.1371/journal.pbio.1001247).

⁴² WETLAND MITIGATION BANKS AND THE NO-NET-LOSS REQUIREMENT: AN EVALUATION OF THE SECTION 404 PERMIT PROGRAM IN SOUTHEAST LOUISIANA by Abbey Anne Tyrna
http://etd.lsu.edu/docs/available/etd-04102008-141642/unrestricted/Tyrna_thesix.pdf.

The mention of possibly purchasing compensatory credits is inadequate information to base an evaluation of cumulative impacts from loss of wetland function. Even if mitigation were to take place within the same hydrologic basin, we question whether any amount of acreage offsite would be able to replace the functions and values (local flood mitigation, local flora/fauna, etc.) that these wetland tracts currently perform.

The majority of proposed work would impact forested wetlands. While recreating habitat is already a difficult task, forested regions require perhaps the most ingenuity and commitment. Unlike their peers, these sorts of habitats develop over centuries. These time-scales are in stark contrast to those expected by regulators, so we accordingly question any accompanying mitigation measures.

As a whole, it is essential to avoid and minimize impacts to these unique bodies, especially when they are protecting thousands of Jefferson Parish residents from hurricane winds. This ecological function is highly unlikely to be mitigated.

We request more information in the initial Public Notice on efforts made to avoid impacts, necessity of project location, and agency comments.

SUMMARY

- 1. The Project is inconsistent with Louisiana's Comprehensive Master Plan for a Sustainable Coast and a 2016 Executive Order.**
- 2. Project Alternatives have not been addressed.**
- 3. Direct, indirect, secondary, and cumulative impacts must be fully considered.**
- 4. The Public Notice fails to adequately describe the mitigation plan.**
- 5. The final plan, with mitigation plan included, should be made available to the public before any permits are granted.**
- 6. We question whether any wetland mitigation could completely replace the functions and values lost.**

In order to keep us and the public properly informed, we request notification of denials, approvals, and changes to the Applicant's request for a Section 404 Permit, WQC, and CUP. As previously stated, we see pressing needs to conduct an EIS to fully weigh the costs and benefits of appropriate flood protection in coastal Louisiana.

We look forward to a written response.

For a healthy Gulf,
[sent via e-mail]



Scott Eustis
Community Science Director

Gulf Restoration Network
330 Carondelet Street, 3rd Floor
New Orleans, LA 70130
(504) 525.1528 x200
Scott@healthygulf.org

Cc: Matt Rota, Senior Policy Director
Scott Eustis, Coastal Wetland Specialist
Natalie Montoya Wetland Analyst
Tristan Danley, Tulane Environmental Law Clinic
Raul Gutierrez, U.S. EPA, Region 6