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24 December, 2015

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RE: **MVN-2015-01960-CM** - Ascension Pipeline in Ascension, Saint James, Saint John the Baptist Parishes (**WQC 151201-01**)

Dear Mr. Gauthier and Ms. Hill,

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 resources of the Gulf of Mexico. We have serious concerns about the application for a Section 404 Permit (**MVN-2015-01960-CM**) and Water Quality Certification (**WQC 151201-01**) submitted to the United States Army Corps of Engineers (“The Corps”) and Louisiana Department of Environmental Quality (“LDEQ”), respectively, by Ascension Pipeline, LLC (“The Applicant”).

The Applicant requests Section 404 permitting and a Water Quality Certification for its proposed construction of a 35-mile, 12-inch natural gasoline and butane pipeline (“The Project”). The Project would begin at EnLink’s Midstream Riverside facility in Geismar, travel through Saint James Parish and the Maurepas Swamp Wildlife Management Area (“WMA”), and terminate at Marathon Petroleum Company’s refinery in Garyville. Over an estimated 160 wetland acres may be affected by this proposal, including impacts to priceless bottomland hardwood habitat. While a project of this magnitude is significant in its own right, we are concerned about the additive effects of continued fossil-fuel development within the WMA. The Corps and LDEQ should conduct a Programmatic Environmental Impact Statement (“PEIS”) and hold a public hearing to gain further insight into this sort of wetland destruction.

The GRN opposes The Applicant’s request for a Section 404 Permit and Water Quality Certification, and we ask The Corps and LDEQ to deny this request based on the following concerns:



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1. The Project directly conflicts with Louisiana's Coastal Master Plan and a 2008 Executive Order.

Filling in these wetlands directly conflicts with Louisiana's restoration and community-protection goals. The *Comprehensive Master Plan for a Sustainable Coast* clearly states that these valuable wetlands **must** be preserved.

For example, 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

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, thus directly conflicting with the state's goals.

The Louisiana Legislature approved the latest version of the Coastal Master Plan during the 2012 Regular Session,³ with overwhelming public support.⁴

On January 23, 2008, Louisiana Governor Bobby Jindal gave even greater weight to the foundational recommendations laid out in the 2007 Master Plan by issuing Executive Order No. BJ 2008-7 ("Executive Order"). This Executive Order requires that all state agencies "administer their regulatory practices, programs, contracts, grants, and all other functions vested in them in a manner consistent with the Master Plan and public interest to the maximum extent possible."

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

⁴ Louisiana Coastal Master Plan Public Opinion Survey, Southern Media & Opinion Research, Inc. Online at <http://www.mississippiardelta.org/files/2012/04/2012-Louisiana-CMP-Opinion-Survey.pdf>



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⁵ The Executive Order, in addition to ordering all state agencies to comply with the Master Plan, asserts that “state agencies must function in a manner that recognizes the vital importance of expediting hurricane and coastal protection and ensuring sustainable practices in our coastal zone.”⁶

While the Executive Order strives to implement the Master Plan’s goals to preserve wetland areas, The Applicant seeks to obtain permits for a project that will potentially destroy over 160 acres of wetlands, which protect communities from localized flooding, in order to construct a pipeline. LDEQ cannot both follow the Executive Order and issue a Water Quality Certification to The Applicant, given an expected impact on over 160 acres of valuable habitat for commercial development.

The Master Plan also states that “overall hydrology must be improved by minimizing impediments to water flow.”⁷ Allowing The Applicant to affect over 160 acres of wetlands is obviously inconsistent with the mandate to improve hydrology and minimize impediments to water flow.

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

2. Water Dependence of The Project has not been demonstrated by The Applicant.

The intent of Corps regulation is to avoid the unnecessary destruction or alteration of Waters of the United States, including wetlands, and to compensate for the unavoidable loss of such waters. Corps regulations require that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

Based on this provision, an evaluation is required in every case for use of non-aquatic areas and other aquatic sites that would result in less adverse impact to the aquatic ecosystem, irrespective of whether the discharge site is a special aquatic site or whether the activity associated with the discharge is water dependent. A permit cannot be issued, therefore, in

⁵ Exec. Order No. BJ 2008-7, available at <http://gov.louisiana.gov/assets/docs/OfficialDocuments/2008EO7SustainableCoast.pdf>.

⁶ *Id.*

⁷ *Id.*



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circumstances where an environmentally preferable practicable alternative for the proposed discharge exists.

For proposed discharges into wetlands and other special aquatic sites, The Corps requires consideration of whether the activity associated with the proposed discharge is “water dependent.” **Water dependency is defined in terms of an activity requiring access or proximity to or siting within a special aquatic site to fulfill its basic project purpose.**

According to The Applicant’s application submitted to the Louisiana Department of Natural Resources (“LDNR”) for a Coastal Use Permit (“CUP”), the purpose of The Project is to construct a pipeline that will transport natural-gas liquids to the Marathon Petroleum Company’s Garyville refinery. This pipeline would eliminate a portion of the foreign-sourced natural gasoline the refinery consumes and offer Marathon protection against disruptions in other existing supply chains. Similarly, this pipeline will also provide EnLink Midstream with critical product egress for its 100,000 barrel-per-day fractionator in Riverside.⁸

Pipelines are inherently not water dependent, and The Applicant has not clearly demonstrated that The Project is an exception. The Applicant has also failed to demonstrate that practicable alternatives do not exist.

According to 40 CFR §230.10(a)(3):

[W]here the activity associated with a discharge which is proposed for a special aquatic site (as defined in subpart E) does not require access or proximity to or sitting within the special aquatic site in question to fulfill its basic purpose (i.e. not water dependent), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the same aquatic ecosystem,⁹ unless clearly demonstrated otherwise.

Wetlands are considered “special aquatic sites.”¹⁰ There is no reason or explanation given by The Applicant concerning why this development must be sited in wetlands to “fulfill its basic purpose.” Since the burden of proof rests with The Applicant, it must therefore be concluded

⁸ Section 8 of The Applicant’s CUP Application, submitted 12/10:
http://sonris-www.dnr.state.la.us/sundown/cart_prod/cart_crm_application?pcup_num=P20150393&pline_id=8&ps how_appl_email=N

⁹ 40 C.F.R. §230.10(a)(3) (2009).

¹⁰ 40 C.F.R. §230.41.



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that this proposal is not water dependent. And according to the regulations, non-wet practicable alternatives must then exist.¹¹

In its present form, The Corps and LDEQ must deny The Applicant's requests for a Section 404 Permit and Water Quality Certification.

3. Project Alternatives have not been addressed.

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.¹² The Corps' regulations also require that destruction of wetlands is to be avoided to the extent practicable.¹³

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."¹⁴ If a project is not "water dependent," as is the case with pipelines, the guidelines contain a presumption that a less environmentally damaging practicable alternative exists while also requiring that the applicant clearly demonstrates that practicable alternatives which would not involve discharge of fill material into special aquatic sites were not available.¹⁵

Publicly-available documents provide no evidence that The Applicant has engaged in a proper alternative analysis, to determine if non-wet potential project sites exist. 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 location.

Impacts to wetland areas could obviously be minimized if the development were relocated to non-wet regions. As noted above, a burden to show the non-existence of practicable

¹¹ It should be further noted that 40 C.F.R. §230.20(a)(2) allows for the consideration of alternative sites *not owned* by The Applicant if they can be reasonably obtained and utilized for the basic purpose. Here, where the basic purpose is pipeline development, it can be easily assumed that numerous non-wetland properties could be reasonably obtained to fulfill the basic purpose, and it is clearly within The Applicant's burden to demonstrate otherwise.

¹² 40 C.F.R. § 230.10.

¹³ 33 C.F.R. § 320.4(r).

¹⁴ 40 C.F.R. §§ 230.5(c), 230.10(a).

¹⁵ 40 C.F.R. § 230.10(a)(3).



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alternatives rests with The Applicant, when the proposed project is located in a special aquatic habitat and is not water-dependent.

The Applicant has made brief mention of alternative pipeline routes in its CUP application; however, out of the only three examined routes, two were previously described as the “shortest” in length.¹⁶ The latest revision of the CUP application has remedied this, though “length” remains misspelled.¹⁷ **These basic oversights are testaments to the lack of consideration given to project alternatives.**

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.

4. Direct, indirect, secondary, and cumulative impacts must be considered.

Given the information in the Public Notice,¹⁸ it does not appear The Applicant has fully considered the direct impacts, or even addressed indirect, secondary, and cumulative impacts of the proposed wetland fill and clearing:

Direct impacts – The direct impacts of The Project are certainly significant. There would be considerable impacts to water quality and wildlife habitat, including potential threats to threatened species that either reside or feed in this area such as the Alligator Snapping Turtle and Southern Creekmussel.

¹⁶ Section 11 of The Applicant’s CUP Application, submitted 12/1:
http://sonris-www.dnr.state.la.us/sundown/cart_prod/cart_crm_application?pcup_num=P20150393&pline_id=6&ps how_appl_email=N

¹⁷ Section 11 of The Applicant’s CUP Application, submitted 12/10:
http://sonris-www.dnr.state.la.us/sundown/cart_prod/cart_crm_application?pcup_num=P20150393&pline_id=8&ps how_appl_email=N

¹⁸ Joint Corps/LDEQ Public Notice:
http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015_01960_%201_PNall.pdf



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The fill of such a large area is also in violation of the federal and state anti-degradation policy. The Louisiana policy states that “administrative authority will not approve any wastewater discharge or certify any activity for federal permit that would impair water quality or use of state waters.”¹⁹

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;²⁰ Preserve and enhance the natural and beneficial values served by wetlands.

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

Indirect and Secondary impacts – This project will further destroy wetlands that act as buffers to recurring storms and localized flooding events. The destruction of these wetlands, in direct opposition to the State Master Plan, would certainly contribute to weakening 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.”²¹ Where upwards of 160 acres of wetlands are involved, it is unacceptable that The Applicant offers no analysis of these probable impacts.

Cumulative impacts – The cumulative impacts on storm and flood protection must be taken into consideration. This project could incite additional construction and in turn jeopardize even

¹⁹ LA. ADMIN. CODE tit. 33, pt. IX §1109(A)(2).

²⁰ 18 C.F.R. §725.2.

²¹ 40 C.F.R. §230.41.



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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 scenic Blind River and other surrounding 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 disruption of over 160 acres of wetlands, The Corps and LDEQ cannot approve this permit as submitted.

5. The Applicant must develop a spill-response plan, and local floodplain officials should be included in the notification of this permit, since the proposed site sits within an area vulnerable to flooding.

The Applicant must have disaster response plans in place prior to project permitting. We have yet to see any mention of this sort, in any public documents. The location of this proposed project is especially critical because of the WMA's status as a nature preserve and the Blind River's status as a scenic river.

Moreover, LDEQ cannot be a "passive umpire" when it comes to permitted materials. This responsibility was distinctly highlighted in the recent ruling, *Sierra Club Delta Chapter v. La. Dep't Nat. Res.*, No. 00060916, Div. A (La. 19th JDC Dec. 23, 2014). LDEQ must accept responsibility for materials permitted under the umbrella of water-quality. Until The Applicant has drafted an adequate spill-response plan, its application for a Water Quality Certification ought to be deemed inadequate.

These wetlands also lie within the 100-year floodplain that is inherently susceptible to storm-surge events (Figures 1, 2, and 3).²² However, The Applicant makes no mention of any containment plans for the transported natural-gas liquids. This is deeply concerning, given the proposed site's distinct geography.

The responsibility of managing flood risk in Louisiana lies largely with individual parishes. Since parish officials are charged with administering the hazard mitigation program, they should also be informed of this permit, which impacts wetlands that mitigate flood risk. Relevant to this particular instance, the Ascension, Saint James, and Saint John the Baptist floodplain managers are Marcia Shivers (MShives@apgov.us, 225-621-5700), Ryan Donadieu

²² FEMA Flood Maps: Ascension, Saint James, and Saint John Parishes <http://maps.lsuagcenter.com/floodmaps/>



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(Ryan.Donadieu@stjamesla.com, 225-562-2370), and Eric Wolverton (E.Wolverton@sjbparish.com, 985-651-5565), respectively.

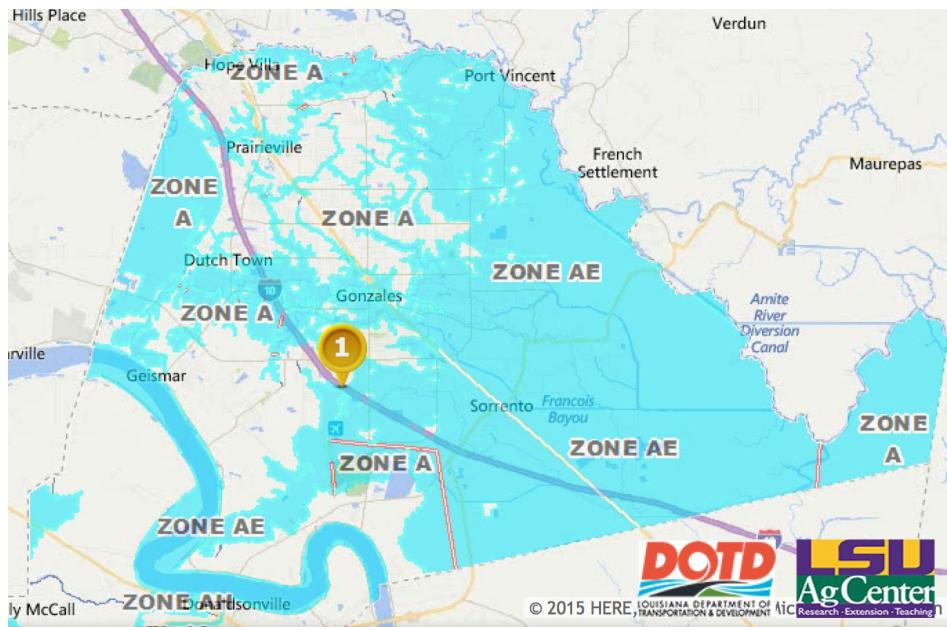


Figure 1: The Project, as proposed, traverses area at-risk for flooding

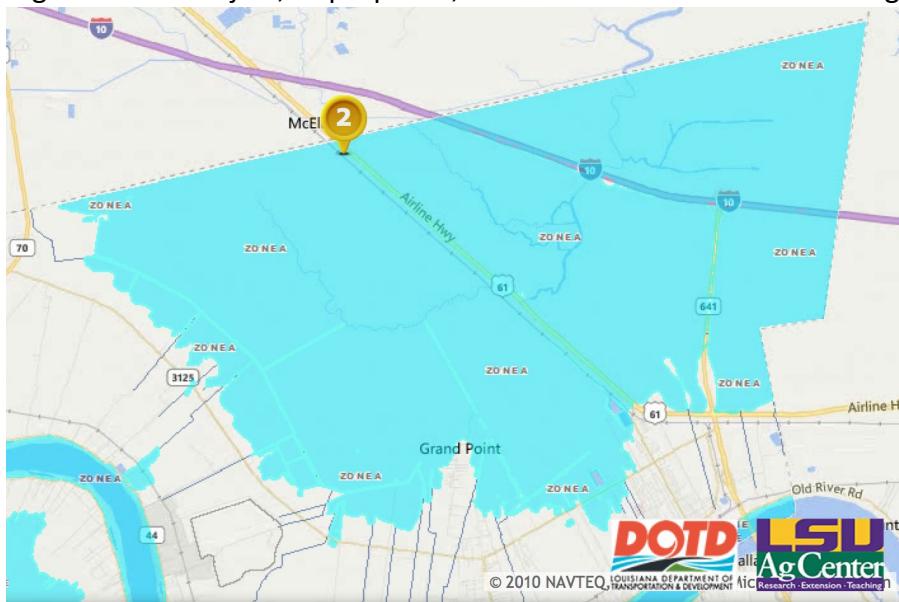


Figure 2: The Project also experiences risk of flooding in Saint James Parish



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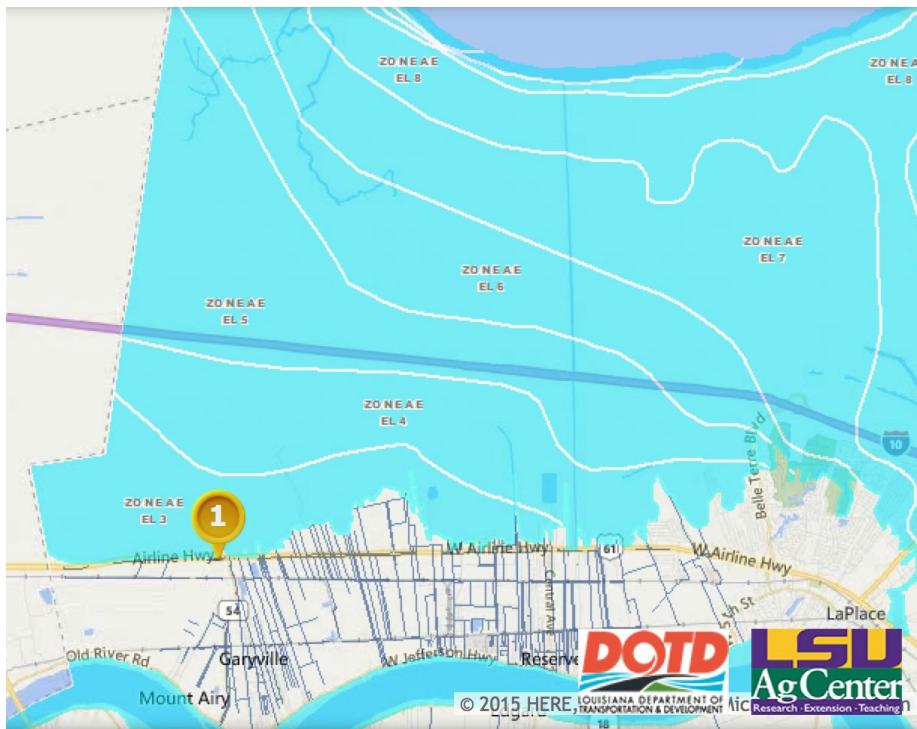


Figure 3: The Project is further at-risk for flooding in Saint John the Baptist Parish

The Applicant's application must be deemed inadequate until it submits a spill-response plan. We also request that local floodplain managers be notified of the associated, significant flood and spill risks.

6. 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 its CUP application, The Applicant requests a full growing-season to assess wetland impacts and only vaguely mentions plans of purchasing compensatory credits from a mitigation bank to atone for The Project's permanent, unavoidable impacts.²³

²³ Section 11 of The Applicant's CUP application, submitted 12/10:
http://sonris-www.dnr.state.la.us/sundown/cart_prod/cart_crm_application?pcup_num=P20150393&pline_id=8&ps how_appl_email=N



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This information is bolstered by further details included in the joint Public Notice from The Corps and LDEQ. Here, the seasonal-regrowth approach appears to be limited to “temporary work areas,” “outside of the [WMA].” Within the WMA, temporary workspaces will be replanted with native species. All other impacts will be addressed through mitigation credits, from banks “within the watershed of impact that offer rehabilitation and restoration acreage of the same habitat being impacted.”²⁴

Additionally, The Applicant also proposes the purchase of a 1,500-acre property, adjacent to the WMA, which would then be donated to the Louisiana Department of Wildlife and Fisheries. While this parcel of land would add to the existing WMA, a disconnect between habitat preservation and wetland mitigation becomes apparent. *More to the point, adding already-existing habitat to the WMA does little to atone for damages within the WMA itself.*

To be fair to The Applicant, it has shared more mitigation information with the public than what is typical. However, it remains difficult to meaningfully comment on a project without being able to review more detailed mitigation proposals. For this reason, all permit applications should include specific mitigation plans so that they can be evaluated throughout the application process.

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.”²⁵ 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:²⁶

- 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

²⁴ Joint Corps/LDEQ Public Notice:

http://www.mvn.usace.army.mil/Portals/56/docs/regulatory/publicnotices/2015_01960_%201_PNall.pdf

²⁵ 40 CFR § 230.94(b).

²⁶ 33 CFR § 322.4[c].



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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.

To satisfy the Clean Water Act, mitigation plans must provide a level of detail "commensurate with the scale and scope of the impacts"²⁷ 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."²⁸
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/or preservation at the compensatory mitigation project site."²⁹
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."³⁰
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."³¹
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

²⁷ 33 C.F.R. § 332.4(c).

²⁸ 33 C.F.R. § 332.4(c)(2).

²⁹ 33 C.F.R. § 332.4(c)(3).

³⁰ 33 C.F.R. § 332.4(c)(4).

³¹ 33 C.F.R. § 332.4(c)(5).



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compensatory mitigation project will provide the required compensation for unavoidable impacts to aquatic resources resulting from the permitted activity.”³²

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; plans to control invasive plant species; the proposed grading plan, including elevations and slopes of the substrate; soil management; and erosion control measures.”³³
7. “A description and schedule of maintenance requirements to ensure the continued viability of the resource once initial construction is completed.”³⁴
8. “Ecologically-based standards that will be used to determine whether the compensatory mitigation project is achieving its objectives.”³⁵
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.”³⁶ 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).³⁷
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.”³⁸
11. “A management strategy to address unforeseen changes in site conditions or other components of the compensatory mitigation project, including the party or parties

³² 33 C.F.R. § 332.4(c)(6).

³³ 33 C.F.R. § 332.4(c)(7).

³⁴ 33 C.F.R. § 332.4(c)(8).

³⁵ 33 C.F.R. § 332.4(c)(9).

³⁶ 33 C.F.R. § 332.4(c)(10).

³⁷ 33 C.F.R. § 332.6.

³⁸ 33 C.F.R. § 332.4(c)(11).



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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.”³⁹

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.”⁴⁰
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).⁴¹
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....”⁴² “The special conditions must clearly indicate the party or parties responsible for the implementation, performance, and long-term management of the compensatory mitigation project.”⁴³
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.”⁴⁴

³⁹ 33 C.F.R. § 332.4(c)(12).

⁴⁰ 33 C.F.R. § 332.4(c)(13).

⁴¹ 33 C.F.R. § 332.6.

⁴² 33 C.F.R. § 332.3(k).

⁴³ 33 C.F.R. § 332.3(l).

⁴⁴ 33 C.F.R. § 332.7(a).



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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 resource type, providing the expected functions, and attaining any other applicable metrics (e.g., acres).”⁴⁵

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/or 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.”⁴⁶

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 the and avoidance and minimization statement 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.

⁴⁵ 33 C.F.R. § 332.5(a).

⁴⁶ 33 C.F.R. § 332.5(b).



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7. The final plan, including a mitigation plan, 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 process are The Applicant's CUP application and associated Public Notice, along with 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.

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

If 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^{47 48} 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:

[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.⁴⁹

⁴⁷ Spieles, D. J. 2005. Vegetation Development in Created, Restored, and Enhanced Mitigation Wetland Banks of the United States. *Wetlands*. 25:51-63.

⁴⁸ 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)

⁴⁹ *Id.*



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A recent LSU master's thesis has outlined the failure to replace ecological functions by the New Orleans District 404 regulatory branch.⁵⁰ 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.

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.

As outlined in the below table of values provided with the joint Public Notice, the majority of proposed work would impact forested wetlands (Table 1). 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 well as the 'temporary' classification.

As a whole, it is essential to avoid and minimize impacts to these unique bodies.

⁵⁰ 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_thesisx.pdf



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Table 1: Potential Acres of Wetland Impact, by Type and Location (CZ: Coastal Zone)

Habitat Type	'Temporary'		'Permanent'			Total	
	<i>Outside CZ</i>	<i>In CZ (and WMA)</i>	<i>Outside CZ</i>	<i>In CZ (and WMA)</i>	<i>In CZ (no WMA)</i>		
PEM	3.053	21.824	2.880	-	-	27.757	
PSS	0.180	3.152	1.041	0.186	7.398	0.333	12.290
PFO	23.791	30.044	21.260	15.821	15.628	14.514	121.058
Stream	0.652	0.562	0.633	-	-	-	1.847
Total	27.676	55.582	25.814	16.007	23.026	14.847	162.952

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

9. Neither Nationwide Permit 12 nor any other Nationwide Permit can be used for construction of any significant portion of The Project

The Nationwide Permit 12 is one of several categories of general permits issued by the Corps for activities that will have minor environmental impacts. Nationwide Permit 12 applies to specific projects required in the construction of utility lines, which include pipelines, located in waters of the United States. Federal regulations mandate that an applicant seeking a Nationwide Permit 12 must comply with general conditions.⁵¹

As set forth in the conditions, limitations, and restrictions:⁵²

(e) Discretionary authority:

(1) A division engineer may assert discretionary authority by modifying, suspending, or revoking NWP [Nationwide Permit] authorizations for a specific geographic area, class of

⁵¹ 33 CFR § 330.4.

⁵² §330.4, 2013.



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activity, or class of waters within his division, including on a statewide basis, whenever he determines sufficient concerns for the environment under the section 404(b)(1) Guidelines or any other factor of the public interest so requires, or if he otherwise determines that the NWP would result in more than minimal adverse environmental effects either individually or cumulatively.

(2) A DE may assert discretionary authority by modifying, suspending, or revoking NWP authorization for a specific activity whenever he determines sufficient concerns for the environment or any other factor of the public interest so requires. Whenever the DE determines that a proposed specific activity covered by an NWP would have more than minimal individual or cumulative adverse effects on the environment or otherwise may be contrary to the public interest, he must either modify the NWP authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by NWP and provide instructions on how to seek authorization under a regional general or individual permit. . .

(4) NWPs do not authorize any injury to the property or rights of others.

To qualify for NWP authorization, the prospective permittee must comply with the applicable general conditions, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. The general conditions limit the application of Nationwide permits when they would affect:

- Aquatic Life Movements
- Spawning Areas
- Migratory Bird Breeding Areas
- Shellfish Beds
- Water Supply Intakes
- Management of Water Flows
- Fills Within 100-Year Floodplains
- Soil Erosion and Sediment Controls
- Removal of Temporary Fills
- Wild and Scenic Rivers
- Endangered Species
- Migratory Bird and Bald and Golden Eagle Permits.

A review of publicly-available documents shows The Project, as proposed, would be associated with many of the effects listed above. Moreover, The Project would result in more than minimal adverse environmental effects either individually or cumulatively and is otherwise contrary to



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the public interest. The Corps must accordingly modify the NWP authorization to reduce or eliminate the adverse impacts of pipeline construction (including any segment thereof) for which construction under NWP 12 or any other nationwide permit is sought. Or, the Corps must prohibit the use of NWP 12 or any other nationwide permit.

10. This proposal warrants a Programmatic, or Area-Wide, Environmental Impact Statement (PEIS).

Approval of this permit could induce many other permit applications for development within the Maurepas Swamp WMA. Along with the pending Maurepas Pipeline Project (Louisiana Refining System), this additional potential pipeline will likely impact the preserved forested habitat significantly.

We submit this additional section to address concerns that have been raised about comprehensive environmental review.

Claim: A programmatic EIS is not warranted because The Corps has no program for comprehensively analyzing impacts to wetland forests.

Facts: Wrong. NEPA expressly contemplates preparation of an EIS for situations just like this one: where an agency is facing multiple independent permitting decisions that have overlapping, shared, or cumulative impacts.^{53,54,55}

Federal guidance and courts sometimes refer to these reviews as "programmatic," || while in other cases, they are called "area-wide" or "overview" EISs. The label is not important. Rather, it is the content of such an assessment that matters. The federal Council on Environmental Quality offers further guidance (in a straightforward Q&A format):

Question: When is an area-wide or overview EIS appropriate?

Answer: The preparation of an area-wide or overview EIS may be particularly useful when **similar actions, viewed with other reasonably foreseeable or proposed agency actions, share common timing or geography.** For example, when a variety of energy projects may be located in a single watershed, or when a series of new energy technologies may be developed through federal funding, the overview or area-wide EIS would serve as a valuable and necessary analysis

⁵³ See Native Ecosystems Council v. Dombeck, 304 F.3d 886 (9th Cir. 2002) ("A single NEPA review document is required for distinct projects when ... the projects are '_connected,' '_cumulative' or '_similar' actions ...")

⁵⁴ 40 C.F.R. § 1508.25 (mandating single EIS for separate independent actions under some circumstances)

⁵⁵ 40 C.F.R. §1502.4(a), (c) (requiring a single EIS where proposals are "related to each other closely").



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of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.⁵⁶

Courts have agreed that a single EIS is required for multiple discrete actions under some circumstances, for example, when the projects have common timing, geography, and/or impacts.^{57,58} Such circumstances exist here.

Claim: A comprehensive review of multiple pipeline projects would be “unprecedented.” ||

Facts: Wrong. There is ample precedent for such a review, including area-wide EIS processes that are underway right now. For example, The Corps reviewed four independent phosphate mining projects that have cumulative impacts within a 1.32 million acre area of Central Florida.⁵⁹ This Florida EIS examined multiple independent projects from different applicants that share impacts on important resources.

Similarly, the National Marine Fisheries Service is conducting a large-scale programmatic EIS on anticipated permitting activities for exploratory drilling in an area of over 200,000 square miles in the Beaufort and Chuckchi Seas.⁶⁰ In a 2010 letter to The Corps, Region IV of the EPA asked for an area-wide EIS for multiple phosphate mines in central Florida, observing the following: Addressing cumulative and secondary (indirect) effects in a piecemeal manner through the regulatory process (i.e. permit by permit) for impacts of this magnitude, cannot effectively or sufficiently address cumulative impacts to the Peace River Watershed as a whole. An area-wide EIS could adequately address these cumulative and secondary effects.⁶¹

Claim: A programmatic EIS will take too much time, and be too speculative.

Facts: Wrong. If the cumulative impacts information is necessary to an informed and lawful decision—which it is—the agencies must develop it whether it is part of a PEIS or individual

⁵⁶ Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations 40 CFR Parts 1500 - 1508 (1987). <http://energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>

⁵⁷ See, e.g., Blue Mountains Biodiversity Project v. Blackwood, 161 F.3d 1208, 1215 (9th Cir. 1998) (multiple timber sales must be evaluated in a single EIS where the sales were reasonably foreseeable, in a single general area, disclosed at the same time, and developed as part of a comprehensive strategy);

⁵⁸ Earth Island Institute v. U.S. Forest Service, 351 F.3d 1291 (9th Cir. 2003) (confirming that “similar actions”—i.e., actions which have similarities, such as common timing or geography, that warrant comprehensive review—must be considered in a single EIS if it is the “best way” to consider their impacts).

⁵⁹ Areawide Environmental Impact Statement for Phosphate Mining in the Central Florida Phosphate District <http://www.phosphateaeis.org/>

⁶⁰ Supplemental Draft Environmental Impact Statement (SDEIS) on the Effects of Oil and Gas Activities in the Arctic Ocean. <http://www.alaskafisheries.noaa.gov/protectedresources/arctic/>

⁶¹ Need for Area Wide Environmental Impact Statement “Bone Valley Phosphate Mining Region (Peace River Watershed, Florida) 10 Mar, 2010.



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EISs. There is no reason why one would go faster than the other. Nor are the questions to be asked speculative. It is, in fact, relatively simple to calculate what a boom in WMA development means for wetlands impacts, habitat impacts, contamination of groundwater, air impacts, health impacts, truck traffic, road damage, pollution, lost property values, and lost commercial opportunities in the region. For issues where there is a disagreement over the existing facts, the PEIS will provide the best opportunity to develop data that is crucial to an informed decision.

11. The proposal does not appear to offer any public benefit or be in the public interest.

As already noted, The Corps must not only consider alternative pipeline routes, it must also choose the least-damaging practicable alternative.⁶² The least-damaging practicable alternative is the “no action” alternative. This alternative goes to the heart of this entire process – whether there even exists a public need for The Project.

Although paraphrased above, for the sake of emphasis, below is the project need as described by The Applicant in its CUP Application:⁶³

“The proposed project will provide normal butane and natural gasoline to the Marathon Petroleum Company’s Garyville, LA refinery in order to eliminate a portion of the foreign-sourced natural gasoline it consumes and offer Marathon protection against disruptions in other existing supply chains. Similarly, this pipeline will provide EnLink Midstream with critical product egress for EnLink’s 100,000 bpd fractionator in Riverside, LA. The pipeline will provide a safer, more reliable, and more cost effective mode of transportation compared to the alternative of moving this material via barge on the Mississippi River from Riverside to Garyville.”

The proposal pipeline is clearly intended to provide benefit to Marathon Petroleum and EnLink Midstream. These companies wish to reduce overhead costs and streamline their operations, for the sake of earning greater profits.

No mention however is made regarding how the actual residents of Ascension, Saint James, and Saint John the Baptist Parishes would benefit from The Project. Community members are likely left with all the unaccounted, external costs of the proposal, in the form of reduced flood

⁶² 40 C.F.R. § 230.10(a).

⁶³ Section 8 of The Applicant’s CUP Application, submitted 12/10:

http://sonris-www.dnr.state.la.us/sundown/cart_prod/cart_crm_application?pcup_num=P20150393&pline_id=8&ps how_appl_email=N



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protections, heightened spill risks, and the countless other impacts associated with the climate-disrupting reliance on fossil-fuel infrastructure.

Given the well-known volatility of natural-gas markets, The Applicant ought to demonstrate the long-term viability of The Project. To demonstrate at least some of the projected project-related benefits, an analysis that includes no fewer than five years of historical market data should be included and weighed in the decision-making process.



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SUMMARY

- 1. The Project directly conflicts with Louisiana's Coastal Master Plan and a 2008 Executive Order.**
- 2. Water dependence of The Project has not been demonstrated by The Applicant.**
- 3. Project Alternatives have not been addressed.**
- 4. Direct, indirect, secondary, and cumulative impacts must be considered.**
- 5. The Applicant must develop a spill-response plan, and local floodplain officials should be included in the notification of this permit, since the proposed site sits within an area vulnerable to flooding.**
- 6. The Public Notice fails to adequately describe the mitigation plan.**
- 7. The final plan, including a mitigation plan, should be made available to the public before any permits are granted.**
- 8. We question whether any wetland mitigation could completely replace the functions and values lost.**
- 9. Neither Nationwide Permit 12 nor any other Nationwide Permit can be used for construction of any significant portion of The Project**
- 10. This proposal warrants a Programmatic, or Area-Wide, Environmental Impact Statement (PEIS).**
- 11. The proposal does not appear to offer any public benefit or be in the public interest.**



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In conclusion, The Corps and LDEQ must take the mandates of the Clean Water Act and The State's Comprehensive Master Plan for a Sustainable Coast seriously. These responsibilities are only heightened when faced with the inadequacy of The Applicant's public documents.

The Applicant has not shown that the basic purpose of The Project is water-dependent, has not demonstrated a lack of practicable alternatives, has not assessed significant impacts, has only vaguely described plans for compensatory mitigation, and has not explained how The Project offers public benefit or is in the public interest.

A decade since the 2005 hurricane season, GRN is beyond alarmed by the wetland destruction occurring throughout Louisiana and the rest of the Gulf Coast. We hope The Corps and LDEQ will take the above comments seriously and act upon them accordingly.

In order to keep us and the public properly informed, we request notification of denials, approvals, and/or changes to The Applicant's request for a Section 404 Permit and Water Quality Certification. As previously stated, we see pressing needs to conduct a PEIS and to hold a public hearing to fully weigh the impacts of continued impacts to wetland forests in the Maurepas Swamp WMA.

We look forward to a written response.

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

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