

BUDDY ROEMER
GOVERNOR



RON GOMEZ
SECRETARY

DEPARTMENT OF NATURAL RESOURCES

February 16, 1990

Mr. Ed Fike- CZM Coordinator
Lafourche Parish Council
P.O. Drawer 5548
Thibodaux, La. 70302

RE: Coastal Management Division's regulatory authority over lands
within the Larose to Golden Meadow Hurricane Protection
Levee.

Dear Ed:

CMD received your letter of Dec 8, 1989 requesting that CMD make a determination as to the Division's jurisdiction over areas within the Larose to Golden Meadow Hurricane Protection Levee that are being mitigated for by work on the Pointe Au Chien State Wildlife Management Area. You stated that Dr. C.G. Groat on September 20, 1985 agreed to the mitigation of the wetlands included within the protection system. Consequently the Parish suggests that the area within the levees should be considered exempt from permitting. After compiling and reviewing the record on this project, it has been determined that CMD had in fact granted consistency for the mitigation work (and also realignment of a portion of the levee which constituted a reduction of impacts from the authorized alignment). Since the hurricane protection levee project was considered "grandfathered", it is CMD's view that this consistency determination is limited to the acceptability of


mitigation work (and partial levee realignment), and does not pass judgement as to the adequacy of this mitigation to compensate for wetland loss resulting from the Hurricane Protection Levee. It is our finding, after legal consultation, that until the construction of the hurricane protection levees are actually completed, and the exchange of water within the leveed areas with coastal waters is actually blocked, there is no basis for exempting activities within these areas from the permit review process. Once that situation becomes a reality, there will still be a need for CMD to review projects proposed within the leveed areas to determine if they need a CUP. Exemptions are based upon the nature of the activity and the potential for impact to coastal waters. Location may greatly influence the potential coastal impacts from an activity, but it is not the sole consideration when determining whether or not the activity is exempt.

A consistency determination has been made concerning the installation of pumping stations #4, #6, #7 in the hurricane protection levee, and a "temporary" pumping station at Breton Canal on the protected side of the hurricane protection levee (coastal consistency #C880523). These pumps were considered to be "grandfathered" because pumping stations were included in the project plan prior to 1980 and were referenced in the EIS. The project was revised under #C880523 to modify those pumps slightly in number and location. The revisions were found not to change the purpose and impacts resultant from the drainage of this area as described in the original project design. Therefore, this activity is considered part of the original design, and not a new phase of the project. Since CMD has given consistency on these pumping stations as a Direct Federal Action, and the parish is the local sponsor for this project, the parish need not obtain a CUP to construct the pumping stations at the locations proposed in #C880523. It should be noted that any deviation from the design, and location of these pumps should be submitted for consistency review (along with a coastal use consistency determination, FONSI statement, and EA or Supplemental EIS) so that CMD can determine the potential impacts to coastal waters outside of the levee system.

I hope this letter has answered your question to your

satisfaction. If you have any questions concerning this matter please contact John de Mond of the Consistency Section or Rocky Hinds of the Permit Section.

Sincerely,

A handwritten signature in cursive script that reads "Terry W. Howey". The signature is written in dark ink and is positioned above the printed name and title.

Terry W. Howey
Director, Coastal Management Div.

TWH/Jd

CC: Windell Curole- South Lafourche Levee District
E. Scott Clark- NOD Corps of Engineers