



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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James W. Little, Jr.
United States Army
Corps of Engineers
New Orleans District
Regulatory Branch
Post Office Box 60267
New Orleans, LA 70160-0267
(225) 342-3099
James.Little@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.Hill@la.gov

re: **MVN-2002-03266-WII** - Cameron LNG, LLC (**WQC 160325-02**)

Dear Mr. Little and Ms. Hill,

I write 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 are concerned about the time extension and permit modification request, related to Section 404 Permit (**MVN-2002-03266-WII**) and Water Quality Certification (**WQC 160325-02**), submitted to the United States Army Corps of Engineers (“Corps”) and Louisiana Department of Environmental Quality (“LDEQ”) by Cameron LNG, LLC (“Applicant”).

The Applicant requests an extension and modification to its existing Section 404 permit and Water Quality Certification (“WQC”) for proposed road improvements, fire precautions, and rip-rap placements (“Project”). The Project would complement the development of a liquefied natural gas (“LNG”) terminal, on the border of Calcasieu and Cameron Parishes. The Applicant expects its LNG terminal to have the capacity to accommodate train deliveries of volatile compounds. Despite the Project’s relatively minimal direct effect to wetlands, there are significant connected impacts that must be weighed in the decision-making process. We see a Programmatic Environmental Impact Statement (“PEIS”) as the ideal tool for this sort of analysis, especially considering the great push to develop LNG infrastructure across the Gulf Coast.

GRN opposes the Applicant's request for a time extension and modification to its Section 404 Permit and WQC. We ask the Corps and LDEQ 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 wetlands not only limits ecological function, but it also fails to minimize water-flow impediment or improve overall hydrology.

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

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.*

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>.

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 seeks to obtain a permit extension and modification for its Project that will facilitate the development of an LNG terminal.

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

2. 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.”⁹

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, while balancing environmental costs and benefits with economic and social factors. Agencies must also consider whether alternate projects, sites, or mitigating measures would better protect the environment.¹⁰

Given information available in public documents, it does not appear that the Applicant and LDEQ have fully weighed the costs and benefits relevant to the Project. Direct, indirect,

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.*

⁹ See Article IX of Louisiana Constitution:

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

¹⁰ 452 So. 2d 1152 (La. 1984).

secondary, and cumulative impacts of the proposed wetland fill and clearing remain overlooked.

Federal regulations have not been fully implemented either. Per executive orders 11988 and 11990, preventing impacts to wetlands requires certain aspects 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.”¹¹

Since the Applicant does not thoroughly adhere to the executive order, the Corps and LDEQ should deny the permit application.

The cumulative impacts on storm and flood protection must also be taken into consideration. The destruction of these wetlands, in direct opposition to the Master Plan, would further weaken the state’s storm defenses. When combined with similar wetland-destroying projects, this permit approval could result in more flooding in nearby communities, as well as degraded water quality in surrounding watersheds. The whole area must be looked at as an interrelated ecological unit in order to truly assess impacts.

There exists a significant push to develop and construct these sorts of LNG terminals along the Gulf Coast. Thanks to hydraulic fracturing, domestic natural-gas producers now possess historic supplies, along with the expectations that they will be sold to highest bidders. Allowing this project to proceed would reaffirm regional precedent for unrestrained fossil-fuel expansion, in turn jeopardizing even more valuable wetland habitat.

¹¹ 18 C.F.R. §725.2.

Crucially, the eventual export of LNG is not isolated from natural-gas extraction. *Natural gas must first be captured from underground deposits, before it can be transported anywhere.* Recognizing this reality can then allow for the ‘total cost’ of the Project to be calculated. The Applicant presently appears unwilling to ground itself in this reality.

The Project’s external costs in the forms of environmental and health damages will be felt by communities in coastal Louisiana and beyond. Citizens across the Gulf are exposed daily to water and airborne contaminants because of the natural-gas industry. All the while, surrounding natural beauty is impacted by drilling wells, compressor stations, storage facilities, train cars, rail lines, access roads, and miles and miles of pipe.

No mention is made by the Applicant regarding how the actual residents Cameron Parish would benefit from the Project. Community members are instead likely to be left with all the unaccounted, external costs of the Project: health and environmental impacts, reduced flood protections, heightened spill risks, and the countless other costs 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.

3. The Project warrants a Programmatic, or Area-Wide, Environmental Impact Statement (PEIS).

There is currently a race to approve the many proposed LNG-export terminals that will potentially be sited throughout watersheds of the Gulf Coast. The Lake Charles region is especially targeted, with multiple LNG proposals in the permitting pipeline. These federal actions are foreseeable and “connected in geography and timing” due to the financial and geological nature of the LNG-export fad.

Today’s scramble threatens significant, maximal wetland destruction, all to overbuild an industrial infrastructure of limited use. Companies with undue advantages are skirting environmental-review processes, leaving the United States and Louisiana depauperate. Just as the LNG-import fad filled many wetlands to no economic benefit, this fad in a capital-intensive, volatile industry will leave empty industrial spaces where once the United States and Lake Charles had flood protection and fisheries habitat.

Approval of this permit could induce many other permit applications for development within the Lake Charles area and surrounding region.

We include the below section to address concerns that have been raised about comprehensive environmental review:

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 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 of the affected environment and the potential cumulative impacts of the reasonably foreseeable actions under that program or within that geographical area.¹²

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.^{13,14} Such circumstances exist here.

Claim: A PEIS is not warranted because the Corps has no program for comprehensively analyzing wetland impacts from LNG infrastructure.

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.^{15,16,17}

¹² 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>.

¹³ 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).

¹⁴ 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).

¹⁵ 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 ...”).

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

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

Claim: A comprehensive review of multiple infrastructure 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.¹⁸ 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.¹⁹ 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.²⁰

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

Facts: Wrong. Should the cumulative impacts information be necessary to make an informed and lawful decision—which it is—the agencies must develop it, whether it is part of a PEIS or individual EISs. There is no reason why one would go faster than the other. Nor are the questions to be asked speculative. In fact, it’s relatively straightforward to calculate what a boom in LNG development will mean for wetlands, ecosystems, hydrologic basins, groundwater contaminants, airborne pollutants, health impacts, truck traffic, road damage, lost property values, etc. 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.

¹⁸ Areawide Environmental Impact Statement for Phosphate Mining in the Central Florida Phosphate District <http://www.phosphateaeis.org/>.

¹⁹ 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/>.

²⁰ Need for Area Wide Environmental Impact Statement “Bone Valley Phosphate Mining Region (Peace River Watershed, Florida) 10 Mar, 2010.

SUMMARY

- 1. The Project is inconsistent with Louisiana's Comprehensive Master Plan for a Sustainable Coast and a 2016 Executive Order.**
- 2. Direct, indirect, secondary, and cumulative impacts must be fully considered.**
- 3. The Project warrants a Programmatic, or Area-Wide, Environmental Impact Statement (PEIS).**

The Corps and LDEQ must take federal and state regulations seriously, along with the mandates put forth by Louisiana's *Comprehensive Master Plan for a Sustainable Coast*, Governor John Bel Edwards, and the Louisiana Supreme Court. Conducting examinations at the Programmatic level will allow regulators to assess the true scope of LNG development. Although the particular project in question is mainly focused on road expansion, it's a useful window into the scale this sort of development necessitates. Together, the access roads, rail lines, pipelines, drilling wells, collecting basins, and compressor stations all form the collective LNG infrastructure.

Over a decade since the 2005 hurricane season, GRN is beyond alarmed by the wetland destruction occurring throughout Louisiana and the Gulf Coast. We hope the Corps and LDEQ will act upon the above comments accordingly.

In order to keep us and the public properly informed, we request notification of denials, approvals, and/or changes to the Applicant's modification and extension request to its Section 404 Permit and WQC. And as previously stated, we see pressing needs to conduct Programmatic studies to fully weigh the impacts of regional LNG development.

We look forward to a written response.

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



James G. Hartwell, MSPH
Coastal Wetland Analyst

Gulf Restoration Network
330 Carondelet Street, 3rd Floor
New Orleans, LA 70130
(504) 525.1528 x209
James@healthygulf.org

Cc: Matt Rota, Senior Policy Director
Scott Eustis, Coastal Wetland Specialist
Johanna de Graffenreid, Coastal Campaign Organizer