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U.S. DISTRICT COURT
EASTERN DISTRICT OF LA

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

LORETTO O'REILLY, Jr.,)
 KELLY FITZMAURICE, AND)
 HAZEL SINCLAIR)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES ARMY CORPS)
 OF ENGINEERS)
)
 Defendant.)

File Number: 04-0940
 Section: "A"
 Division: 5
 Judge Jay C. Zainey
 Magistrate Judge Alma L. Chasez

**DEFENDANT UNITED STATES ARMY CORPS OF ENGINEERS'
ANSWER TO PLAINTIFFS' COMPLAINT**

Defendant United States Army Corps of Engineers (hereinafter "Defendant") hereby submits its Answer to the Complaint of Plaintiffs Loretto O'Reilly, Jr., Kelly Fitzmaurice, and Hazel Sinclair (hereinafter "Plaintiffs"). Defendant specifically denies each and every allegation of the Complaint not otherwise expressly admitted, qualified, or denied by this Answer. The numbered paragraphs in this Answer correspond to the numbered paragraphs in Plaintiffs' Complaint.

1. Defendant admits that the first sentence of Paragraph 1 is Plaintiffs' characterization of their case.
2. As to the first sentence of Paragraph 2, Defendant admits that it approved the permit without preparing an Environmental Impact Statement, but denies all other allegations in

Fee _____
 Process _____
 X Dktd _____
 CtRmDep _____
 Doc. No. _____

this sentence. The remaining allegations in Paragraph 2 are conclusions of law to which no response is required.

3. Paragraph 3 states conclusions of law to which no response is required.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of the first clause of Paragraph 8, and therefore denies those allegations. The remainder of Paragraph 4 characterizes Plaintiffs' claim and, therefore, no response is required.

5. Paragraph 5 states conclusions of law to which no response is required.

6. Paragraph 6 states conclusions of law to which no response is required.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 7, and therefore denies those allegations.

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 8, and therefore denies those allegations.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 9, and therefore denies those allegations.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 10, and therefore denies those allegations.

11. Defendant denies the allegations in Paragraph 11.

12. Paragraph 12 states conclusions of law to which no response is required.

13. Defendant admits the allegations in Paragraph 13.

14. Defendant admits the allegations in the first two sentences of Paragraph 14.

Defendant denies the allegations in the third sentence of Paragraph 14, and avers that the

Applicant resubmitted the application on August 29, 2001. Defendant admits the allegations in the fourth sentence of Paragraph 14.

15. As to the first sentence of Paragraph 15, Defendant admits that according to the 2001 application, the project would require dredging and filling approximately 39.54 acres of pine flatwood/savannah wetlands in St. Tammany Parish, in the vicinity of the Little Tchefuncte River and Timber Branch Tributary. Defendant avers that the project site totals approximately 81.58 acres.

16. Defendant admits the allegations in Paragraph 16.

17. Defendant admits that the Applicant initially submitted an application to the Corps for a permit for a three-phase project. Defendant admits that the Applicant refers to the current proposal as "Phase I of Timberbranch II." Defendant avers that the initial application was for a project that would constitute a total of 147 acres and involve 92 acres of wetlands. Defendant denies all other allegations in this paragraph.

18. Defendant denies the allegations contained in the first sentence of Paragraph 18 because the allegations are vague and indefinite. As to the second sentence of Paragraph 18, Defendant admits that the project would involve 47,000 cubic yard of fill material. Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments regarding the amount of concrete involved in the project. Defendant denies that the project would dramatically increase the threat of flooding in the area.

19. As to the first sentence of Paragraph 19, Defendant admits that the EPA noted that the loss of the wetlands involved in the project "may lead to adverse downstream impacts such as decreased water quality." As to the second sentence of Paragraph 19, Defendant admits that EPA

so stated in a September 1999 letter. Defendant avers that this letter was in response to the initial permit application by the Applicant, which proposed to clear, grade, and fill approximately 92 acres of forested wetlands, as opposed to the 39.54 acres in the permit at issue in this case. In any event, the letter from EPA speaks for itself and is the best representation of its contents.

20. Defendant admits the allegations contained in this paragraph. Defendant avers that EPA noted “we understand that the area already experiences occasional severe flooding.” In any event, the letter from EPA speaks for itself and is the best representation of its contents.

21. Defendant admits the allegations contained in the first and second sentences of Paragraph 21. Defendant denies the third sentence of Paragraph 21.

22. Defendant admits the allegations in Paragraph 22.

23. The first sentence of Paragraph 23 is Plaintiffs’ characterization of their case and requires no response. The second sentence of Paragraph 23 states conclusions of law to which no response is required.

24. Paragraph 24 states conclusions of law to which no response is required.

25. Paragraph 25 states conclusions of law to which no response is required.

26. Paragraph 26 states conclusions of law to which no response is required.

27. Paragraph 27 states conclusions of law to which no response is required.

28. Paragraph 28 states conclusions of law to which no response is required.

29. Paragraph 29 states conclusions of law to which no response is required.

30. Paragraph 30 states conclusions of law to which no response is required.

31. Paragraph 31 states conclusions of law to which no response is required.

32. Paragraph 32 states conclusions of law to which no response is required.

33. Paragraph 33 states conclusions of law to which no response is required.
34. Paragraph 34 states conclusions of law to which no response is required.
35. Paragraph 35 states conclusions of law to which no response is required.
36. Paragraph 36 states conclusions of law to which no response is required.
37. Paragraph 37 states conclusions of law to which no response is required.
38. Paragraph 38 states conclusions of law to which no response is required.
39. Paragraph 39 states conclusions of law to which no response is required.
40. Paragraph 40 states conclusions of law to which no response is required.
41. Paragraph 41 states conclusions of law to which no response is required.
42. Paragraph 42 states conclusions of law to which no response is required.
43. Paragraph 43 states conclusions of law to which no response is required.
44. Paragraph 44 states conclusions of law to which no response is required.
45. Paragraph 45 states conclusions of law to which no response is required.
46. Paragraph 46 states conclusions of law to which no response is required.
47. Paragraph 47 states conclusions of law to which no response is required.
48. Paragraph 48 states conclusions of law to which no response is required.
49. Defendant incorporates by reference paragraphs 1 through 48 above of this

Answer in response to Paragraph 49 of the Complaint.

50. Paragraph 50 states conclusions of law to which no response is required.
51. Paragraph 51 states conclusions of law to which no response is required..
52. Defendant admits the allegations in Paragraph 52.
53. Paragraph 53 states conclusions of law to which no response is required.

54. Defendant incorporates by reference paragraphs 1 through 48 above of this Answer in response to Paragraph 54 of the Complaint.

55. Defendant admits that the Decision Document notes that anticipated changes include increased traffic flows and installation of a centralized sewage treatment facility. Defendant denies the remainder of Paragraph 55. In any event, the Decision Document speaks for itself and is the best representation of its contents.

56. Defendant denies the allegations in Paragraph 56.

57. Defendant denies the allegations in Paragraph 57.

58. Paragraph 58 contains conclusions of law to which no response is required.

59. Defendant incorporates by reference paragraphs 1 through 48 above of this Answer in response to Paragraph 59 of the Complaint.

60. Defendant admits the allegations in Paragraph 60.

61. Defendant denies the allegations in Paragraph 61.

62. Paragraph 62 contains conclusions of law to which no response is required.

The balance of Plaintiffs' Complaint constitutes Plaintiffs' Prayer for Relief. Defendant denies that Plaintiffs are entitled to any of the relief prayed for in the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiffs' claims are not ripe for adjudication.

SECOND DEFENSE

The Court lacks jurisdiction, in whole or in part, over the subject matter of this action.

THIRD DEFENSE

Some or all of Plaintiffs' claims may be barred by the doctrines of res judicata, estoppel, or waiver.

Respectfully submitted this 7th day of June, 2004.

THOMAS L. SANSONETTI
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United States Department of Justice



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CERTIFICATE OF SERVICE

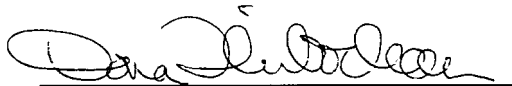
I hereby certify that I served the foregoing **DEFENDANT UNITED STATES ARMY CORPS OF ENGINEERS' ANSWER TO PLAINTIFFS' COMPLAINT**

on:

Josh Borsellino, Student Attorney
Karla Raettig
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118

Attorneys for the Plaintiff, by causing a full, true and correct copy thereof to be sent, on the date set forth below, by mailing in a sealed, first class postage prepaid envelope, addressed to the last known mailing address of the attorney and deposited with the United States Postal Service at Washington D.C.

DATED this 7th day of June, 2004

A handwritten signature in black ink, appearing to read "Dana Thibodeau", written over a horizontal line.

Dana Thibodeau