

**Appeal # / -**

Brenda Kennedy appealing the Dept. of Engineering, Office of Coastal Zone Management Denial, on October 14, 2004 for issuance of an after the fact Local Coastal Use Permit for the placement of fill on wetlands for the construction of a private drive to provide access to property on an extension of Boe Drive, South of Island Drive. (Ward 7, District 7) LCUP 2004-0441)



## St. Tammany Parish

Department of Engineering  
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Covington, LA 70434  
Phone: (985) 898-2552 or (985) 646-4086  
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*Appeal # 1*

*Kevin Davis  
Parish President*

### Narrative Staff Report Appeal from Denial of Local Coastal Use Permit

Applicant: Brenda Kennedy

LCUP Number: ST04-036

CUP Number: P2004-0441

Use: Application for permit to place fill in wetlands for access to property

#### **Brief Background:**

St. Tammany Parish Department of Engineering's office of Coastal Zone Management (CZM), in 1998, issued Kennedy a permit to construct a home and driveway on this parcel. Presumably, because the applicant could not comply with other Parish standards applicable to her project, no construction was performed and that permit expired in 2002.

In 2004, two years after the initial permit expired, the applicant began filling and grading in wetlands without a valid permit. Code enforcement issued a cease and desist and the applicant submitted an application for an after-the-fact permit.

A review was made of the permit application under the Coastal Use Guidelines detailed in St. Tammany Parish's Local Coastal Program and the potential adverse impacts were found to outweigh the project benefits. The permit was denied and the applicant was ordered to remove all fill material placed illegally and restore the project site to its prior condition.

#### **Issues:**

##### Permit Issuance and Later Denial

In 1998 when the initial permit was reviewed, the Parish Coastal Use Permit process was less scrutinizing than it is today. Without much Parish interest in regulating the placement of fill material or development in wetlands, the job of processing environmental permits fell mainly to the US Army Corps of Engineers with that agency determining the appropriate mitigation, and the likely impacts to wetlands from the fill. The Parish's role in environmental permitting was minimal and Coastal Use Permits were typically reviewed to ensure basic compliance with Coastal Use Guidelines and if the Corps was willing to issue the permit, so was CZM.

Over the past few years, policies at the State Department of Natural Resources have

changed to require parishes to become much more prominent in the wetland permitting process. New reporting requirements, mitigation guidelines, the development of the "Conservation Plan", and the development of the Corps' Programmatic General Permit have all contributed to the St. Tammany Parish Local Coastal Program becoming very involved in the permitting of wetland impacts in the St. Tammany Parish Coastal Zone. In some cases, CZM replaces the Corps as the primary permitting entity.

Additionally, the Parish has begun to develop comprehensive standards separate from the Local Coastal Program for the placement of fill material in order to avoid the problems associated with fill in wetlands and flood plains. It has also begun to take a greater interest in the environmental implications of new development. Consequently, the Local Coastal Use Permit process has begun to take those standards and policies into consideration when processing local permits. Permits are reviewed in greater detail for compliance with Coastal Use Guidelines, and much greater focus is placed on avoiding adverse impacts to vegetated wetlands.

This change in policy and gradual shift in priority on both a state and local level is precisely why our permits have expiration dates. Just because a Parish office reviewed a project and found it acceptable several years ago does not mean that the same project still complies with the standards and policies of the Parish several years later.

#### Fill and Compliance with Other Parish Laws

It is now common, as opposed to standard operating procedure in 1998, for CZM to require that permit requests show a project design that complies with the Department of Engineering's standards for the placement of fill prior to issuing Coastal Use authorization. However, Kennedy's plan did not comply with the standards Engineering requires for the placement of fill in flood plains and critical and sensitive drainage areas. The new fill ordinances would prohibit any fill from being placed on this lot without express dispensation from the Department Director. And while the current strict standards prohibiting fill in critical areas were passed just after this unauthorized work took place, the fact is that the work did not even comply with the looser standards in place when the illegal work initially occurred. Those standards would limit fill for the driveway on this lot to 12" and for the house pad to 24". Fill would only be allowed for the minimum footprint required to support the construction. With an application that expressly states that no house is to be constructed, this fill is far in excess of what the old law would allow.

Engineering holds the position that the applicant, because the proposed use was never in compliance, cannot use the date of the unauthorized filling or the after-the-fact application to avoid conformity with the new fill ordinance. This project should have been designed to meet today's "no net fill" standards. Generally speaking, exceeding them enhances the flood risk to residents in the Bayou Lacombe watershed.

Additionally, other Parish departments have issues with this particular proposal, but as they have not been involved in reviewing this permit request, those issues are not yet brought to the forefront and played little role during CZM permit review. It is as of yet unresolved issues with the Department of Planning that caused the initial permit to lapse. The applicant was unable to proceed with the plan laid out in that permit because Planning would not authorize the issuance of a building permit.

### Proposed Use

This application began in 1998 with a request to place fill in wetlands for the construction of a driveway, house, appurtenant structures, and yard. That permit had been expired for two years by the time the applicant began any work. When the applicant illegally began the fill and grading work in February 2004, they were required as part of the enforcement action to submit a new LCUP application for the work done, and any additional work proposed. The after-the-fact application detailed a home, driveway and other elements, and was in every way identical to the permit issued years prior.

When inquiries were made by CZM to correct or clarify numerous deficiencies or contradictions in the new application, the applicant asserted in return correspondence that the proposed use was not, in fact, a house and other work as detailed in the application. She changed her application more than once to reflect proposals for any number of project elements, none of which involved a home or any other structure. The proposal under review went through various configurations at various points involving a road, a series of ponds partly located on property owned by others, a widened area of fill at the end of the road and a boat slip. It became very unclear as the process went on exactly what the applicant was proposing and for what purpose. Consequently, a balancing the private and public benefits of the use against the potential adverse impacts under the Coastal Use Guidelines was difficult.

### Remedial Work

At all times during this violation and after-the-fact permit process, the Parish has maintained firmly that the work done had the potential for adverse impacts not only to the footprint of the work done, but also to acres of adjacent wetlands by cutting off the natural flow of water. Since the initial days of the controversy, the Parish has requested that either the offending fill material be removed, or some significant effort be made to prevent additional impacts to wetlands. Resistance on the part of the applicant was consistent and no remedial work was accomplished until over seven months had passed since the initial violation and threats of legal action were made.

Shortly after the violation occurred, the Parish asked J.V. Burkes' staff (Kennedy's agent at the time) to determine the most appropriate location for cuts to be made in the road in order to restore at least some of natural wetland hydrology. After meeting on site with the Parish, and following up with correspondence to secure Parish concurrence on their findings on the location of the remedial work, the applicant's first agent removed themselves from the project. Admittedly, some delays resulted from the hiring of a new agent who had to become familiar with the status of the project.

The initial remediation proposal called for the installation of culverts in various locations in order to restore flow from Bayou Lacombe. Until the entire project had been reviewed and approved, the Parish was reluctant to approve culverts or any other construction element that would move the applicant forward toward completion of the project. Since it was still unclear whether the proposal would actually receive a permit, CZM also wanted to discourage the applicant from making further investment in the project. For this reason, CZM told the applicant to make the cuts in the fill material to facilitate hydrologic flow, but expressly prohibited the installation of culverts until the permit was issued.

The applicant's response was to go to the site and install culverts in direct contradiction of our demand.

#### Denial of the Permit Request

This permit was denied for numerous reasons. The primary reason for denial was the continued inconsistency in the proposal and the potential for the work to have an adverse impact on the Bayou Lacombe watershed (both environmental impacts and flood hazard impacts). Initially, the proposal called for the construction of a residence, driveway, yard, and associated structures. All of the supporting documentation sent in with the initial application describes the same. Later submissions act as if the request for residential development was never made. The applicant is now asking to be allowed to do all of the work adversely impacting valuable wetlands, without any of the justification required to support such work. Since the latest stated purpose is only "conventional access", it does not offer much support for the significant amount of work proposed.

The proposed use is inconsistent with numerous Coastal Use Guidelines and Goals, Policies, Objectives provided in the St. Tammany Parish Local Coastal Program. CZM attempts generally to balance the benefits and adverse impacts of every project under the standards enumerated in the Local Coastal Program. This project was found to be inconsistent with many of the general guidelines such as avoiding adverse impacts, both direct and cumulative or secondary, to highly productive wetlands and biological diversity. The linear facility involved, the driveway, was not designed to minimize its impact on hydrology and no care was taken at all to prevent the fill material from polluting surrounding wetlands and waterways.

Surface Alteration, any change in the ground surface or usability, must also comply with guidelines. Surface alterations for the most part are only to take place on lands above 5' above sea level where sufficient infrastructure already exists to support the development. Draining or filling wetlands is strongly discouraged.

Additionally, when examined in their entirety, the Goals, Policies, and Objectives of the Local Coastal Program clearly state that development should be allowed only where the adverse impacts to wetlands and other critical habitats can be avoided. All of the standards set forth in that section of the ordinance require a balancing of the project benefits and detriments and are geared toward protecting high value wetlands and other coastal habitats from degradation as a result of development. There are also Objectives and Policies that require the Parish to encourage development only on non-tidal, non-flooding, infrastructure supported areas approved for development by the Planning Commission.

Additionally, it is the position of the Department of Engineering that even though no law expressly gives the Department the authority to do so, CZM is unable to issue authorization to proposals that do not meet the other departmental standards imposed on the activity. One office in the department should not authorize work that violates other ordinances that another office in the department administers.

In sum, the potential for adverse impacts to public safety from the loss of flood storage and obstruction to flow, to the environment from the loss of highly productive wetlands, and the likelihood of significant cumulative and secondary impacts resulting from the proposal, outweighed potential benefits of the project and its stated purpose under a comprehensive Coastal Use Guideline review.



Chairwoman Patricia Brister  
St. Tammany Parish Council  
P.O. Box 628  
Covington, LA 70434

October 22, 2004

Dear Chairwoman Brister,

I am writing this letter on behalf of my client, Ms. Brenda Kennedy, requesting that you place her appeal of denied Coastal Use Permit 2004-0441 on the Parish Council's next meeting agenda. This request is in response to a letter dated October 14, 2004, and received October 16, 2004, from Director of Engineering, Jean Thibodeaux to Ms. Kennedy (Enclosure 1).

Ms. Kennedy is appealing the decision to deny her request for an After-the-Fact Coastal Use Permit in response to Mr. Thibodeaux's three stated reasons for denial.

1. **"Lack of consistency in the stated purpose and the project elements"** In a letter from Brian Fortson dated June 28, 2004, he requested clarification for "inconsistencies and contradictions in the file" for permit application P2004-0441 (Enclosure 2). The six items were addressed in a letter to him dated August 16, 2004 (Enclosure 3). In particular, Items 4, 5, and 6 specifically addressed the purpose and project elements in the After-the-Fact permit application. Project elements did change from those originally submitted, but those changes were in direct response to St. Tammany Parish requests. The site plan submitted for the original application was no longer correct because it did not reflect an agreed upon plan for addressing the request for hydrologic restoration. The plan submitted in the hand delivered response dated June 2, 2004, was the proposed ponds, ditches, and culverts plan submitted as Item 3 in Mr. Fortson's letter dated May 26, 2004, requiring "a plan showing the appropriate location for the removal of existing fill to restore the natural hydrology to the marsh north and west of the project site" (Enclosure 4). The amended plan dated August 12, 2004, and submitted with the August 16, 2004 letter, reflected the requested configuration, including an option for hydrologic restoration faxed to Mr. Lane Carson on August 13, 2004. That plan configuration encompassed work within the original After-the-Fact permit application footprint.



2. **“Potential adverse ecological and public safety impacts outweigh the potential benefits of the project based on the stated purpose”** Potential adverse ecological impacts were addressed through the U.S. Army Corps of Engineers’ (Corps) 404 Permit issued to Ms. Kennedy for work at this project site. A mitigation payment was required as Special Conditions 7-10 of Permit EE-19-980-2152 (Enclosure 5). Ms. Kennedy received a letter from The Nature Conservancy written to Ronald Ventola of the Corps dated March 4, 2004, confirming that it had received payment for 0.9 acres of pine wetland mitigation (Enclosure 6). Personal correspondence with Annette Chioma of the Corps Regulatory Branch, Permits-Eastern Section, on June 16, 2004, confirmed that no additional mitigation would be required, even if the mitigation requirements had changed, because the original terms of the permit were still valid.

Regarding potential adverse public safety impacts, Ms. Kennedy was issued Coastal Use Permit STP98-020 on August 3, 1998, by John Shires, P.E., Director, Department of Engineering, LCP Administrator (Enclosure 7). The work location is described as “parcel of property near the end of Boe Drive on Bayou Lacombe in Lacombe.” The Project Description is detailed as “fill to construct driveway and house pad for construction of new single family residence as well as construction of a recreational dock on a man made canal off of Bayou Lacombe. Fill shall be limited to the footprint of the driveway and the area needed for construction of the residence and yard.” The requested permitted work that was denied by Mr. Thibodeaux encompasses a smaller fill footprint than was previously permitted by Mr. Shires. Clearly, potential adverse public safety impacts were determined to be insignificant by the Department of Engineering and LCP Administrator upon issuing the original Coastal Use Permit.

3. **“Lack of compliance with other mandatory parish standards for the placement of fill in flood hazard areas”** The After-the-Fact permit application was received by the Louisiana Department of Natural Resources Coastal Management Division (DNR) on March 29, 2004. DNR completed its review of the application and transferred it to the St. Tammany Parish Local Coastal Program for authorization on March 30, 2004 (Enclosure 8). During a meeting with Jean Thibodeaux on June 29, 2004, he stated to me the work that had already been completed was in violation of the Chapter Seven Drainage Ordinance that addressed placement of fill material in a floodplain. The ordinance he referenced and provided me a copy of was Ordinance C.S. No. 04-0862, dated May 17, 2004, commonly referred to as “No Fill in a Floodzone A”. Ordinance 04-0862 is an ordinance to amend and reenact St. Tammany Parish Code of Ordinance, Chapter 7, Drainage and Flood Control, Article I. It was introduced on March, 4, 2004, provided by legal counsel, and declared adopted on April 1, 2004. Ordinance C.S. No. 04-0886 is an ordinance to amend and reenact St. Tammany Parish Ordinance C.S. No. 04-0862. It was introduced on April 28, 2004, declared adopted on May 6, 2004, and ordained retroactive to the effective date of the



Ordinance it amended, 04-0862, that date being April 1, 2004. The dates of the fill placement, February, 21, 2004, and the After-the-Fact permit application, March 29, 2004, pre-date that ordinance, and, thus, the completed work was not out of compliance with "mandatory parish standards." Furthermore, St. Tammany Parish acknowledged that the fill work had been completed by March 1, 2004, the date of the Cease and Desist Order placed against that activity (Enclosure 9).

In addition to the reasons for appeal stated above, I am including a letter to Ms. Kennedy from attorney James McCaffery for your review and consideration (Enclosure 10). In this letter, Mr. McCaffery comments on the administrative conduct of St. Tammany Parish officials involved in processing Ms. Kennedy's permit application, and he presents his opinion that as a result of their lack of responses to her inquiries, she has not been afforded due process in this matter. A timeline of Ms. Kennedy's inquiries and St. Tammany Parish responses is included as Enclosure 11.

Additionally, the letter includes Section 3.1 from the St. Tammany Parish Coastal Zone Management Regulations, Ordinance No. 92-1607, detailing administration and enforcement of the ordinance with respect to the designation and powers of the Local Coastal Program (LCP) Administrator. Correspondence from St. Tammany Parish on Ms. Kennedy's permit application has been from Jean Thibodeaux, Director of Engineering, and from Brian Fortson, Environmental Specialist. To date, Ms. Kennedy has received no correspondence from the LCP Administrator. Inquiries to DNR Coastal Management Division regarding the listed St. Tammany Parish LCP Administrator yielded that Brian Fortson was the contact person, but that no one was listed as the Administrator. An inquiry to the Department of Development (see Section 3.1 (1)) regarding the name of the LCP Administrator received the response that such a position or designation was unknown. As stated in Mr. McCaffery's letter, if no one is designated as the LCP Administrator, "there is nobody in the Parish Government to deny you rights in this matter."

I appreciate your attention to this request for the appeal of Ms. Kennedy's Coastal Use Permit denial. If you require additional information, please contact me at 504-962-5360 or via fax at 504-962-5362.

Sincerely,

A handwritten signature in black ink that reads "Tonja L. Koob". The signature is written in a cursive, flowing style.

Tonja L. Koob, Ph.D., P.E.  
President

cc: B. Kennedy





# St. Tammany Parish Council

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Marty Dean  
District 1

November 8, 2004

Russell Fitzmorris  
District 2

Via Certified Mail  
# 7004 2510 0002 0050 0134

James A. Thompson  
District 3

Tonja L. Koob, Ph.D, P.E.  
GAEA Engineering Consultants  
5500 Prytania Street  
PMB 536  
New Orleans, Louisiana 70115

Patricia Brister  
District 4

Marty Gould  
District 5

Gary Singletary  
District 6

Re: Your Client, Brenda M. Kennedy  
Appeal to the Parish Council on denial of Coastal Use Permit No. P 2004-0441

Joseph Impastato  
District 7

Dear Dr. Koob:

Chris Canulette  
District 8

I am in receipt of yours dated October 22, 2004 on behalf of your client, Ms. Brenda Kennedy, and appealing the denial of Coastal Use Permit No. 2004-0441 before the St. Tammany Parish Council.

Barry D. Bogert  
District 9

Henry L. Billiot, Jr.  
District 10

Please be advised your client's appeal will be heard by the Council at it's next regularly scheduled meeting on Thursday, December 2, 2004, in Council Chambers at 21490 Koop Drive, Mandeville, LA. Your client or her representative should plan to be present when the meeting begins at 6 p.m. Appeals are heard by the Council in the order in which they appear on it's published agenda.

Steve Stefonic  
District 11

Jerry Binder  
District 12

Joe Thomas  
District 13

Your client will be given the opportunity to present oral testimony in support of her appeal and may submit relevant written or photographic evidence to the Council for review.

Kenneth Burkhalter  
District 14

Should you have any questions regarding Council appeal procedures, you may contact the Council Clerk, Mrs. Diane Hueschen at 985-898-2591.

Michael Sevante  
Administrator

Sincerely,

Tommie K. Burns  
Assistant Administrator

Patricia Brister, Council Chairman

Diane Hueschen  
Council Clerk

Koy J. Koppel  
Council Assistant

Mirta Cardenas  
Council Secretary

xc: Mr. Jean Thibodeaux, Parish Engineer  
Mr. Lane Carson, DA Civil Division



## St. Tammany Parish

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*Kevin Davis*  
*Parish President*

October 14, 2004

Ms. Brenda Kennedy  
70485 D Street  
Covington, LA 70433

Dear Ms. Kennedy,

After reviewing the information submitted as part of after-the-fact permit application P2004-0441, this office has determined that the request should be denied. The proposed project does not conform with the Guidelines, Goals, Policies and Objectives of the Local Coastal Program. Among other deficiencies, the lack of consistency in the stated purpose and the project elements, the fact that the potential adverse ecological and public safety impacts outweigh the potential benefits of the project based on the stated purpose, and the lack of compliance with other mandatory parish standards for the placement of fill in flood hazard areas all contributed to the decision to deny the permit.

This letter is your official notice of the denial of the above referenced permit application. You may appeal this decision to the St. Tammany Parish Council according to that entity's procedural requirements. Said appeal must be filed with that office within ten (10) days from the date of this denial. The St. Tammany Parish Council may be reached at (985) 898-2591 or by mail at P.O. Box 628, Covington, LA 70434.

As a result of this denial, any further work on this site other than the restoration detailed below will be in violation of parish law. The unauthorized fill work done on the project site is currently in violation of both the Local Coastal Program and Parish standards for the placement of fill in a flood hazard area. Please remove all fill and restore the project site to its pre-construction condition within thirty (30) days. After that date, the Parish will pursue civil and/or criminal penalties to its maximum legal ability. The Local Coastal Program itself allows for a daily fine of between \$100 and \$500 for violations in addition to other more serious penalties.

Respectfully,

  
Jean Thibodeaux, P.E.  
Director of Engineering

cc: Ms. Marilyn Forbes, LDNR  
Ms. Annette Chioma, USACE  
Mr. Lane Carson, Chief, DA Civil Division

ENC. 1



## St. Tammany Parish

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*Kevin Davis*  
*Parish President*

6/28/04

Ms. Brenda Kennedy  
c/o Tonja Koob, Ph.D, P.E.  
5500 Prytania Street, #536  
New Orleans, LA 70115

Re: P2004-0441

Ms. Kennedy,

We have received the supplemental packet you delivered and found the information contained therein sufficient to proceed with public notice of the application. However, there are inconsistencies and contradictions in the file now that must be clarified. Unresolved questions exist with regard to both the Local Coastal Use Permit application and the violation of Parish standards regarding the placement of fill within the 100-year flood plain. I will address the Local Coastal Use Permit issues herein. Other staff within the Department of Engineering will address the fill violation issues.

First, the application you submitted indicates in Item 9 c. on page 5 that no work was completed. This is not the case. Although with respect to the entire project, the work performed does not constitute "completion", some work has been completed and this item must reflect that.

Second, and again with reference to the application form itself, Item 10 b. reflects areas of impact of both 0.24 acres and 0.65 acres of vegetated wetlands. What is the reason for the bifurcation and what does each number represent?

Third, to the application again, Item 11 b. on page 6 declares that BMP's will be utilized to minimize impact to wetlands. Please explain in detail by plan amendment what BMP's will be employed and where.

Fourth, the plan submitted with the currently pending application is the plan contained in the previously issued permit dated 1998. However, the response hand delivered dated June 1, 2004 shows a plan quite different from the original. Which one is the configuration being requested for consideration in this application?

Fifth, the above question reflects another contradiction. In the plan submitted with the original application, drawings show a large fill footprint for construction of a driveway, home and appurtenant structures. However, in your recent response, you indicate that this application is not for the purpose of home construction. According to the June 1, 2004 response, the proposed impacts are to support access to the property only. Bearing in mind that the support infrastructure necessary for a house would be necessarily more substantial than that needed for simple access, which is the true purpose for the impacts proposed in the application?

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Sixth, again referencing the June 1 response, the plan shows a series of ponds added along the roadway and in the area of the previously proposed house pad. Since no beneficial impact can result from them with respect to wetland or flood plain issues, what is the purpose of those ponds and were the impacts to vegetated wetlands associated with them reflected in the application? Where will the spoil from the ponds be ultimately deposited? Also, those ponds are proposed on property that is owned by other individuals. Have these individuals consented to work on their property?

Finally, the locations of proposed culvert installations are acceptable as temporary hydrological restoration measures and creation of the cross flow will hopefully eliminate your need to account for additional impacts to wetlands in your upcoming mitigation requirements. However, since the work on the site is unauthorized and in violation of Parish law, use of the current work footprint is not needed. Therefore, you are authorized to excavate to natural marsh sediment elevation in the designated locations, but the installation of culverts is not permitted at this time. The cuts in the fill material footprint must completely transect the fill allowing natural tidal and storm water flow, and should be at least 10' wide. Spoil material from the excavation should be stockpiled in a non-wet location preferably outside of the 100 year flood plain. This should be finished within the month of July, 2004 to allow summer tides access to the marsh and minimize any storm related drainage impacts. If as a result of this permit process you are required to remove any of the existing fill, or allowed to redistribute fill already in place, you will then be allowed to install culverts necessary to accomplish such work.

Responses to these concerns must be addressed in a timely fashion. Additional concerns may be raised by this office or the interested public during the public notice period which ends on July 19, 2004. Those concerns, if any, will be addressed to you or your agent then.

Sincerely,



Brian K. Fortson  
Environmental Specialist

cc: Jean Thibodeaux, P.E.  
Director of Engineering



Mr. Brian K. Fortson  
St. Tammany Parish  
Department of Engineering  
P.O. Box 628  
Covington, LA 70434

August 16, 2004

Dear Mr. Fortson,

I am writing this letter as a follow up to your letter dated June 28, 2004, regarding the inconsistencies and contradictions in the file for the Island Drive Permit P2004-0441. In that letter you detailed six items that needed to be addressed for the After-the-Fact Coastal Use Permit. Each of those items is addressed below.

**Item 9c:** Development of a drive through the right-of-way and into the lot was begun in the latter part of February. That work is not complete and no work is currently in progress. No work was performed after February 29, 2004.

**Item 10b:** The 0.24 acres is for the right-of-way, and the 0.65 acres is for the pad. The previously submitted letter from the Nature Conservancy acknowledged receipt of funds for the mitigation of these 0.9 acres of wetland impact.

**Item 11b:** Best Management Practices (BMPs) to be employed on the project site include hay-bale dikes or silt fencing across slopes, at the foot of slopes, along stream banks, and in small drainage ditches; seeding and mulching of exposed soil at the end of each work day; and diversion dikes built at the upslope perimeter of the construction site to channel rain water away from the disturbed area.

**Plan Configuration for Application:** The plan submitted for the pending application is no longer correct because it does not reflect an agreed upon plan for addressing the current request for hydrologic restoration. The plan submitted in the hand delivered response dated June 2, 2004, is the proposed ponds, ditches, and culverts plan submitted as Item 3 in your letter dated May 26, 2004, requiring "a plan showing the appropriate location for the removal of existing fill to restore the natural hydrology to the marsh north and west of the project site." The enclosed plan dated August 12, 2004, reflects the requested configuration for consideration in this application, including an option for

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The logo for GAEA Engineering & Construction, featuring the word "GAEA" in a bold, sans-serif font above the words "ENGINEERING & CONSTRUCTION" in a smaller font, all contained within a dark rectangular box.

hydrologic restoration faxed to Mr. Lane Carson on August 13, 2004. This plan configuration encompasses work within both the original permit and the After-the-Fact permit application footprints.

**Purpose of Impacts Proposed in Application:** The purpose of the impacts is access to the property by conventional methods.

**June 2, 2004 Site Plan:** As stated above, the plan submitted in the hand delivered response dated June 2, 2004, is the proposed ponds, ditches, and culverts plan submitted as Item 3 in your letter dated May 26, 2004, requiring "a plan showing the appropriate location for the removal of existing fill to restore the natural hydrology to the marsh north and west of the project site." The impacts of the site plan enclosed with this letter are reflected in the application, are located in the existing right-of-way and do not exceed the acreage of wetlands previously mitigated through the Nature Conservancy. This application does not request a permit for ponds on neighboring property nor outside of the right-of-way.

If you require additional information, please contact me via fax or letter.

Sincerely,

A handwritten signature in cursive script that reads "Tonja L. Koob".

Tonja L. Koob, Ph.D., P.E.  
President

Cc: B. Kennedy  
J. Thibodeaux



## St. Tammany Parish

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*Kevin Davis*  
*Parish President*

May 26, 2004

Ms. Brenda Kennedy  
70485 D Street  
Covington, LA 70433

Re: Pending violation off Island Drive in Lacombe (CUP No. P2004-0441)

Dear Ms. Kennedy,

We have received notice that your agent in the above referenced matter has withdrawn from representation. Since correspondence heretofore has been directed to that agent, this office should update you as to the status of your pending after-the-fact application and the information required for its continued processing.

Your application is currently on hold awaiting certain items needed to allow us to continue the review process. Below is a list of those required items:

1. An after-the-fact permit application fee of five hundred fifty (\$550.00) dollars made payable to the Parish of St. Tammany
2. A development plan, prepared by a Licenced Civil Engineer, that meets all of the current requirements of the Department of Engineering regarding the placement of fill and construction of a residence in Flood Zone A, (St. Tammany Parish currently prohibits the placement of fill in Flood Zone A without the issuance of a variance by the Director of Engineering)
3. A plan showing the appropriate location for the removal of existing fill to restore the natural hydrology to the marsh north and west of the project site.

As we discussed in our last meeting with your attorney, this office is willing to delay enforcement action as long as it is moving timely forward to resolution. Our hope is that the withdrawal of your agent does not cause undue delay. The items in 1 and 2 above must be submitted to this office within 30 days or the case file will be turned over to parish counsel for

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Page 2

appropriate enforcement action. Item 3 must be submitted to this office within 10 days of the date of this letter or appropriate enforcement action to ensure the prevention of any secondary impacts to the adjacent marsh will be taken.

Once the above items are received, this office will prepare and publish the public notice required and begin processing the application. Again, this is information required for the review of the application to continue. There is no way for this office to determine at this point whether any permits will be issued or what additional information may be required. There is also no way for this office to address the significant issues this construction raises with other Parish departments relative to the issuance of a valid building permit.

Should you have any questions or comments, please contact me at your convenience.

Sincerely,



Brian K. Fortson  
Environmental Specialist

cc: Mark Ford, Code Enforcement  
Jean Thibodeaux, Director of Engineering  
Sidney Fortenot, Director of Planning  
Marilyn Forbes, LDNR Coastal Management Division





DEPARTMENT OF THE ARMY

NEW ORLEANS DISTRICT CORPS OF ENGINEERS

P.O. BOX 90267

NEW ORLEANS, LOUISIANA 70180-0267

REPLY TO  
ATTENTION OF:

APR 16 1999

Operations Division  
Eastern Evaluation Section

SUBJECT: EE-19-980-2152

Ms. Brenda Marquis Kennedy  
70485 D Street  
Covington, Louisiana 70433

Dear Ms. Kennedy:

Enclosed is a permit dated this date, subject as above, authorizing work under the Department of the Army permit program.

You are again reminded that any work not in accordance with the approved plans is subject to removal regardless of the expense and the inconvenience that such removal may involve and regardless of the date when the discrepancy is discovered.

Your attention is directed to all the terms and conditions of the approval. In order to have the work approved in accordance with the issued permit, all terms and conditions of the permit and plans shown on the drawings attached thereto must be rigidly adhered to.

It is necessary that you notify the District Engineer, Attention: Eastern Evaluation Section, in writing, prior to commencement of work and also upon its completion. The notification must include the permittee's name, as shown on the permit, and the permit number. Please note the expiration date on the permit. Should the project not be completed by that date, you may request a permit time extension. Such requests must be received before, but no sooner than six months before, the permit expiration date and must show the work completed and the reason the project was not finished within the time period granted by the permit.

The enclosed Notice of Authorization, ENG Form 4336, is to be conspicuously displayed at the site of work.

Sincerely,

  
Ronald J. Ventola  
Chief, Regulatory Branch

Enclosure

ENC 5

## DEPARTMENT OF THE ARMY PERMIT

Permittee: Brenda Marquis Kennedy

Permit No.: EE-19-980-2152

Issuing Office: New Orleans District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Clear, grade and maintain fill for construction of an access roadway, driveway and homesite, and construct a dock, in accordance with drawings attached in ten sheets, dated 18 June 1998.

Project Location: In St. Tammany Parish, on Bayou Lacombe, off Boe Drive, at Lacombe, Louisiana.

### Permit Conditions:

#### General Conditions:

1. The time limit for completing the work authorized ends on MARCH 31, 2004. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions: See Page 4.**

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). *Plan 7* ✓
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344). *to 100-111111* ✓
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.

SPECIAL CONDITIONS:  
EE-19-980-2152

7. The permittee has agreed to compensate for unavoidable impacts to wetland functions and values by contributing funds to the Louisiana Nature Conservancy for the acquisition, enhancement, management and administration of 0.9 acres of a pine flatwood/savannah wetlands.
8. The permittee shall make the contribution payable to "The Louisiana Nature Conservancy" and send it in care of Mr. Richard Martin, Post Office Box 4125, Baton Rouge, Louisiana 70821. The permittee shall include a copy of this permit with the contribution.
9. The permittee shall complete the mitigation prior to beginning work on the permitted project or within one year of permit issuance, whichever comes first. The Louisiana Nature Conservancy will provide the Corps of Engineers verification of receipt of the contribution and the Corps of Engineers will then contact the permittee informing him that he may proceed.
10. The compensatory mitigation identified above has been determined to be a necessary and critical part of this permit approval. Failure by the permittee to perform the mitigation, in accordance with the permit conditions, is considered grounds for permit suspension and revocation, and restoration of the permit site.
11. The permittee shall record this permit in the office of St. Tammany Parish Mortgage and Conveyance Records.



P.O. Box 4125  
Baton Rouge, Louisiana 70821  
tel. 225 338-1040  
fax 225 338-0103  
www.louisiananature.org

International Headquarters  
Arlington, Virginia  
tel. 703 841-5300

March 4, 2004

Ronald J. Ventola  
Department of Army  
New Orleans District, COE  
P.O. Box 60267  
New Orleans, LA 70160-0267

Permit No.: EE-19-980-2152  
Applicant: Brenda M. Kennedy  
TNC No.: 614

Dear Mr. Ventola,

This letter is confirmation that The Nature Conservancy of Louisiana has received payment from Brenda M. Kennedy for 0.9 acres of pine wetland mitigation, which was required under the above listed permit. This contribution has been deposited in our Southeast Louisiana Pine Wetlands Mitigation Bank account and will be used for the acquisition, restoration and maintenance of pine wetlands in southeast Louisiana. To date, our bank in the Northshore area has helped conserve over 4,000 acres.

Sincerely,

Jonathan Dearbone  
Land Conservation Specialist

cc: Brenda M. Kennedy  
70485 D Street  
Covinton, LA 70433



St. Tammany Parish Police Jury, Department of Engineering  
Office of Coastal Zone Management  
P.O. Box 628  
Covington, LA 70434  
(504) 898-2552

LOCAL COASTAL USE PERMIT

L.C.U.P. # STP98-020

DNR/CMD # P98-0385

C.O.E. # N/A

Name and Address: Brenda Marquis Kennedy  
70485 D Street  
Covington, LA 70433

Location: Parcel of property near the end of Boe Drive on Bayou Lacombe in Lacombe.

Project Description: Fill to construct driveway and house pad for construction of new single family residence as well as construction of a recreational dock on a man made canal off of Bayou Lacombe. Fill shall be limited to the footprint of the driveway and the area needed for construction of the residence and yard.

In accordance with the rules and regulations of the Louisiana Coastal Resources Program and Louisiana R.S. 49, sections 213.1 to 213.21, the State and Local Coastal Resources Management Act of 1978, as amended, and the St. Tammany Parish Local Coastal Program Ordinance of 1992, as amended, the permittee agrees to:

1. Carry out and perform the use in accordance with the plans and specifications approved by the St. Tammany Parish Department of Engineering, Coastal Zone Management Office.
2. Comply with any permit conditions imposed by the St. Tammany Parish Department of Engineering, the Louisiana Department of Natural Resources and the US Army Corps of Engineers.
3. Complete construction of the use within the time frame specified in the permit. If no term is specified in the permit, the permit shall expire 3 (three) years from the date issued. If construction is not complete within the term of the permit, then the applicant shall request an extension by the LCP Administrator. The permit may be extended by the LCP Administrator if it is found that substantial progress has been made on the construction of the use or its development has been precluded by litigation, material shortages, labor problems, or other events beyond the control of the applicant. Only one (1) extension may be granted. Subsequently, a new permit is required.
4. The applicant must adjust, alter, or destroy any structure or other physical evidence of the approved use if, in the opinion of the LCP Administrator, it proves to be beyond the scope of the use as approved in the permit or if the use is abandoned.
5. The applicant must provide, if required by the LCP Administrator, a surety bond in an acceptable amount to guarantee adjustment, alteration, or removal if it is deemed necessary by the LCP Administrator, LCP Advisory Committee, or the St. Tammany Parish Police Jury.
6. The applicant will agree to hold St. Tammany Parish, the State of Louisiana, and both employees and officers of the parish and state harmless from any damage to persons or property which may result from construction, maintenance, or operation of the use.
7. The applicant, if required, must obtain the certification of a registered professional engineer that construction of the permitted use has been accomplished in accordance with the plans and specifications approved by the LCP Administrator.

ORIGINAL  
1999  
PERMIT

L.C.U.P # STP98-020

DNR/CMD # P98-0385

C.O.E. # N/A

8. The permittee shall allow representatives of the Coastal Management Division, or St. Tammany Parish Police Jury to make periodic, unannounced inspections to assure the activity is being performed in accordance with the conditions of the permit.
9. In order to ensure the safety of all parties, the permittee shall contact the Louisiana DOTTIE System (1-800-272-3020) a minimum of 48 hours prior to the commencement of any excavation or demolition activity.
10. This activity shall neither cause hydrologic changes to occur nor adversely affect existing drainage patterns on adjacent properties.
11. Sediment filters shall be installed in order to prevent fill material from entering adjacent waters and wetlands during construction. Those filters should remain in place until construction is complete and the fill material is well packed.
12. The applicant must provide copies of all other required approvals to the LCP Administrator before commencement of any activity on the permitted location.
13. Any clearing within 50' of the bank of Bayou Lacombe shall require the approval of the St. Tammany Parish Department of Development.
14. The final elevation of fill for the driveway and house pad shall be such that it does not impede the existing storm water flow of Bayou Lacombe.

By signing this permit, the applicant agrees to all terms and conditions listed herein.

Applicant: [Signature] Date: Jan 8, 1999

I affix my signature and issue this permit this 3rd day of August, 1998.

St. Tammany Parish Police Jury,

[Signature]

John Shires, P.E., DIRECTOR  
Department of Engineering  
LCP Administrator

This agreement becomes binding when signed by the LCP Administrator, Department of Engineering, St. Tammany Parish Police Jury.



# State of Louisiana



KATHLEEN BARNEAUX BLANCO  
GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

Date: 3/30/04

CUP# P20040441

Check # None enclosed

RE: Brenda Kennedy  
Bayou Lacombe  
homesite.

Dear Applicant:

After careful review of the referenced coastal use permit application, it has been determined that the proposed activity is of local concern. This means that the permit application will be processed by the local **St. Tammany Parish Coastal Management Program**, not by the state's coastal management program. Therefore, we have refunded any fees you may have paid and forwarded your application to the appropriate local program authority. The parish local program may require an application fee.

For further information, please telephone Mr. Brian Fortson of St. Tammany Parish at (985) 898-2552, or write him at the address below.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Starling".

Sheila Starling  
JPN Coordinator

Brian Fortson  
St. Tammany Parish  
Department of Engineering  
P. O. Box 628  
Covington, LA 70434  
[brian@stpgov.org](mailto:brian@stpgov.org)





ST. TAMMANY PARISH  
GOVERNMENT

DIVISION OF  
CODE ENFORCEMENT

CEASE & DESIST

\* STOP ALL WORK IMMEDIATELY \*

CONTACT DIVISION OF CODE ENFORCEMENT

520 OLD SPANISH TRAIL  
SLIDELL, LA. 70458  
983-646-4170

21490 KOOP DRIVE  
MANDEVILLE, LA. 70471  
985-898-2539

GENERAL PENALTY

WHENEVER IN THE PARISH CODE, ANY ACT OR OMISSION IS PROHIBITED OR DECLARED TO BE UNLAWFUL, THE DOING OR FAILURE TO DO SUCH ACT SHALL BE A MISDEMEANOR PUNISHABLE BY A TERM OF IMPRISONMENT OF UP TO THIRTY (30) DAYS IN THE PARISH JAIL OR A FINE OF UP TO FIVE HUNDRED DOLLARS (\$500) OR BOTH UNLESS SPECIFICALLY PROVIDED OTHERWISE, EACH DAY ANY VIOLATION OF ANY PROVISION OF THIS CODE OR ANY ORDINANCE SHALL CONTINUE, THEN EACH DAYS OFFENSE CONSTITUTE A SEPARATE OFFENSE.

Contact Brian Fortson (Engineer)  
898-2552.

1 MAR 04  
12:48

James M. McCaffery  
LA Bar 17,310  
P. O. Box 52106  
New Orleans, LA 70152  
(504) 866-6016  
(504) 833-6365 (FAX)  
October 21, 2004

Brenda Kennedy  
By FAX:985-898-0017

Dear Ms. Kennedy:

In *State v. Union Tank Car Co.*, 439 So.2d 377, 387 (La. 1983), the Louisiana Supreme Court gave us guidance in matters such as this: "Environmental legislation is not exempt from the due process requirement of definiteness, especially where serious criminal sanctions are involved."

Likewise, in *Matter of Woodrow Wilson Construction Co.*, 563 So.2d 385, 391 (La. App. 1 Cir. 1990) the Court stated the following: "Courts will not construe penal statutes and rules as extending powers not authorized by the letter of the law even if such powers would arguably be within its spirit. This rule applies to administrative law and procedures."

And finally, in *Mult-Care v. State*, 804 So. 2d 673, 676 (La. App. 1 Cir. 2001) we see what is totally lacking in this matter: "When a party invokes the right to a hearing to review the assessment of penalties by an agency for violations of regulations, it is incumbent on the agency to prove by competent evidence the facts upon which the assessment is based."

I have reviewed the totally outrageous conduct by the officials involved in this matter, especially their refusal to answer your numerous letters and faxes and their obvious confusion over what the law and regulations actually are. It is my opinion that their conduct has not afforded you even minimum due process.

I am further amazed by my conversation this date with your son, Rhett Krohn, who tells me that there is no Local Coastal Program Administrator in St. Tammy Parish to administer the program under discussion, required by

Ordinance #92-1607, Coastal Zone Management Regulations! Therefore, there is nobody in the Parish Government to deny you your rights in this matter.

I find it hard to believe that your rights have been so flagrantly violated in this matter.

Please feel free to contact me in the future on this matter.

Sincerely Yours,



### SECTION 3: ADMINISTRATION AND ENFORCEMENT

#### 3.1 Designation and Powers of the Local Coastal Program Administrator and Local Coastal Program Advisory Committee:

- (1) The St. Tammany Parish Police Jury shall appoint a Local Coastal Program Administrator (LCP Administrator) within the Department of Development and under the Director of the Department of Development.
- (2) The LCP Administrator shall have the following enumerated powers:
  - a. to issue, deny or modify permits for uses of local concern;
  - b. to conduct any investigations he/she deems necessary to comply with the purpose of this Ordinance; and
  - c. to inspect and/or investigate conditions relating to this Ordinance in cooperation with the parish administration.
- (3) It shall be the duty of the LCP Administrator to implement this Ordinance. It shall also be the duty of all officers and employees of the parish to assist the LCP Administrator in the implementation of this Ordinance.
- (4) The Police Jury may appoint a Local Coastal Program Advisory Committee (LCP Advisory Committee) of no more than nine members who represent users of coastal resources and shall include representation of users concerned with conservation and preservation of renewable coastal resources and users concerned with development of resources for commercial purposes.
- (5) The LCP Advisory Committee shall assist the LCP Administrator and shall coordinate actions and activities with the Department of Development Director and the LCP Administrator.

got to Loujato  
10/22/07 P.M.  
509 962-5362  
from Brenda Kennedy

- 12/8/03 - 1/5/04      8 phone calls to Mr. Sydney Fontenot.  
No responses.
- 1/7/04 - 1/30/04      Multiple faxes to Dept. of Permit Director  
and Director of Engineering.  
No responses.
- 1/27/04                Faxed & Mailed extension request for 1999  
coastal use permit.  
No response from State or Local.
- NOTE:                 Original LCUP was forwarded by Brian  
Fortson approved by the LOCAL COASTAL  
PROGRAM ADMINISTRATOR.
- 2/27/04                Michael Sevante, Council Administrator &  
area resident left his SIP business card  
attached to construction equipment on job  
site w/message "Please call us regarding  
this project".
- 3/1/04                ) Cease & Desist order posted.  
and 3/3/04 (dated)    Letter from DIRECTOR OF ENGINEERING, Jean  
Thibodeaux, as the LOCAL COASTAL PROGRAM  
ADMINISTRATOR, cited violation of fill by  
not having a LC permit. THIS IS THE FIRST  
MENTION OF NOT HAVING A VALID LC PERMIT.
- 3/24/04              Applied for ANY COASTAL PERMIT.
- 5/17/04                No fill ordinance passed. ELEVEN (11) weeks  
AFTER THE 3/1/04 CEASE & DESIST & Engineering's  
letter citing violation of THE fill ordinance.
- 5/28/04 (dated)      Letter from Brian Fortson stating the Engineering  
Dept. will address the fill violation issue +.  
He additionally asked the purpose of the ponds.  
Told us to dig trenches; threatens to force us  
to mitigate 3.5 acres, @ \$50,000. cost if  
compliance not met.
- 8/8/04                Tonja's letter states SIP's directive to dig 10' wide  
trenches across the drive for hydrological restoration  
has brought the threat of police action from adjacent  
land owner.

8/9/04 (dated) Letter from Brian Fortson ignores the fact that the drive is on neighbors' properties & not on Kennedy's property; Kennedy only has the right to improve or maintain a R-O-W, not destroy the properties owned by others.

8/19/04 (dated) Threat of no meetings; threat of a court reporter.

9/7/04 (dated) Letter from Brian Fortson stating to take the remedial action sanctioned by STP or no further permit review would be made.

10/3/04 Michael Seavate, Council Administrator & neighbor, calls Sheriff's Deputy onto site to stop the remedial work in progress installing culverts.

10/14/04 PARISH DENIES PERMIT.

*Please call me regarding this project*  
St. Tammany Parish



Michael A. Sevante, J.D.  
Council Administrator

Council Office: 888-2591  
Hwy. 69 at Koop Drive

Fax: 888-2593  
Email: [mikes@stp.gov.org](mailto:mikes@stp.gov.org)

P.O. Box 628, Covington, La. 70434

*Paul, copy as message  
abt by Mr. Sebaste  
2/27 of all asked  
to construction equipment  
job site.*