

April 24, 2006

Ms. Colleen Benner
Coastal Impact Assistance Program Coordinator
Minerals Management Service
381 Elden Street, MS 4040
Herndon, Virginia 20170

Dear Ms. Benner:

Please reference your March 6, 2006, letter, transmitting the Coastal Impact Assistance Program (CIAP) draft guidelines. We have reviewed that document, as well as pertinent comments submitted by coastal parishes individually, and by the Parishes Against Coastal Erosion (PACE) (enclosures). I offer the following comments in my capacity as the State of Louisiana's (State) point of contact on CIAP matters.

General Comments

The draft guidelines are well written and comprehensive. Our primary concerns are related to substantive items that we believe are critical to plan formulation and implementation.

Specific Comments

Page 1 Section 1., third paragraph - We remain concerned about the timeline for the Minerals Management Service's (MMS) publication of final CIAP guidelines (September 29, 2006). The State intends to begin implementing, with State funds, some of the projects to be included in Louisiana's CIAP Plan, well ahead of the initial CIAP funding allocations. Our expedited implementation schedule reflects the urgency of addressing Louisiana's severe coastal wetland losses, which were substantially accelerated by Hurricanes Katrina and Rita. We had planned to submit our CIAP Plan in June 2006, and to use the MMS Plan-review process to obtain reasonable assurances that the projects we would build prior to receipt of CIAP funds would very likely be reimbursable once MMS allocates the initial funding (provided that all other approval requirements are met). Thus, the October 2, 2006, initial plan-acceptance date is expected to delay submittal of our plan by approximately 4 months. That delay will impede our early implementation of high priority projects, unless we can mutually agree on an alternative means of obtaining reasonable assurances that a set of identified, CIAP eligible projects are likely to be approved for CIAP funding once MMS determines the initial allocations.

Page 1, Section 4., Coastal Impact Assistance Program Funds – We realize that the CIAP grant process is still being developed; we have some grant-specific questions and comments that we would like addressed during that process. Will the grants have to be submitted (and maintained) online through the grants.gov website? We recommend, in the development of the CIAP grants guidance, that MMS not require separate grants for each project. We can envision significant delays and administrative costs added to CIAP projects if grants would have to be amended if construction bids exceed grant budgets; we also foresee having to amend multiple grants to increase funding for a specific project. On the other hand, a programmatic grant could allow for funding adjustments administratively among multiple projects covered by the same grant. Please carefully consider the significant implications this has on the timely implementation of projects and on the administration of the entire CIAP program. Finally, at your proposed grants workshop, we recommend including hands-on sessions for both administrative and accounting personnel from each state and CPS.

Page 2, Section 4.2.1 – The issue of using CIAP funds as a match/cost-share for federally funded activities is key to Louisiana's Plan development and implementation process. We strongly recommend that MMS not require a new letter from the involved Federal agency each time a grant request is made for a similar type of project with identical restrictions/allowances. We recommend that MMS, instead, accept copies of generic approval letters from the involved Federal agency regarding the use of CIAP funds for certain types of projects. For instance, the Corps of Engineers might issue such a letter from their national or division headquarters, indicating that they authorize the use of CIAP funds as a non-Federal match for specified types of coastal restoration projects, and the State could provide a copy of that letter with each CIAP grant applications involving such projects.

Consolidated comments from PACE (enclosed) indicated that the guidelines should provide as much information as possible regarding the use of CIAP funds for the required non-federal match. The coastal parishes want to leverage their CIAP allocations by using them as matching funds for such federal programs or grants, and the State endorses that approach.

Page 2, Section 4.2.2 – The list of authorized CIAP fund uses (Section 4.1) does not mention infrastructure except in authorized use 5. (i.e., mitigation of the impact of OCS activities through funding of onshore infrastructure projects and public service needs), to which the 23% limitation on CIAP expenditures applies. Paragraph 2 of Section 4.2.2. defines infrastructure as “. . . public facilities or systems needed to support commerce and economic development . . .” Paragraph 1 of that section, however, indicates that the 23% limitation does not apply to offshore infrastructure. The final guidelines should be revised to clearly indicate whether (and what types of) any infrastructure-related expenditures are authorized under uses 1. (conservation, protection and restoration of coastal areas), 2. (mitigation of damage to fish, wildlife, or natural resources), and 4. (implementation of a federally approved marine, coastal, or comprehensive conservation management plan), and, if so, whether they are subject to the 23% limitation. A coastal parish contact recently questioned whether “protection . . . of coastal areas . . .” as included in authorized use 1. might allow CIAP funding of hurricane protection infrastructure to prevent flooding of coastal communities.

We recommend that the final guidelines define “public service needs.” For instance, would providing flood protection to developed areas or improving road service to public port facilities meet that definition? The guidelines should also clarify whether projects to mitigate the impact of OCS activities on “public service needs” must be located onshore, and should confirm whether those projects must have linkage to OCS impacts.

A large majority of Louisiana’s more-than 3 million acres of coastal wetlands is located below the mean high water line. Using the definition in paragraph 3 of this section, none of those lands would be considered “onshore.” Thus, we are concerned that the definition of “onshore”, as included in this section, might rule out CIAP expenditures for infrastructure projects, such as hurricane protection levees, floodgates, highways and port facilities, needed to mitigate OCS-caused impacts, if such projects are located below the mean high water line. This might not be a concern if such projects are deemed by MMS to qualify as “public service needs” under authorized use 5, and do not have to be located “onshore”, as defined in the draft guidelines. Depending on MMS’s responses to these questions, we may provide additional recommendations regarding the definition of onshore infrastructure in the final guidelines.

PACE requested further definition of “infrastructure.” Several parishes are planning “bricks and mortar” projects which they believe will contain an infrastructure component but will also have significant habitat restoration and environmental protection aspects. PACE also requested that, for projects which meet multiple authorized CIAP uses, costs for each such project be distributed proportionally to each applicable authorized use. This should include clarification of how the 23% funding cap would apply in such cases.

The draft guidelines state that: “Funding of infrastructure projects encompasses land acquisition, new construction, and upgrades and renovations to existing facilities or systems, but does not include maintenance or operating costs for the facilities or systems.” We suggest that the final guidance clarify that land acquisition (fee title or easements) is only considered infrastructure if it is related to the implementation of an infrastructure project, and that land acquisition could be part of a conservation project (or its implementation) as defined by CIAP authorized uses of funds definitions 1, 2 or 4 as listed in Section 4.1.

Page 3, Section 4.4 – We recommend that the words “for projects” be removed from the third sentence of this section. This would allow CIAP plan preparation costs to be recouped by states and their political subdivisions.

Page 6, Section 5.2.6 – PACE requested clarification regarding the difference between Tier 1 and Tier 2 projects. The current text indicates that Tier I projects are anticipated to use 100 percent of the CIAP allocation. We agree that greater clarity is needed, as the State and parishes will share in the costs of some proposed projects. Thus, it is likely that some parishes will include all of their funds, and some funds from the State, other parishes, and possibly other entities, in their list of Tier 1 projects. PACE has also asked whether is it desirable or mandatory to include all such shared

costs in the State's and parishes' Tier 1 list. Please confirm that a state's or parish's Tier 2 list is basically a "fallback" list for use if one or more of the Tier 1 projects for the state or that particular parish cannot proceed. Also, please verify that elevation of a Tier 2 project to Tier 1 for such reasons constitutes a minor change and will not require an amendment to the State's approved CIAP Plan.

Page 6, Section 5.2.7 – PACE asked if the State would prepare the necessary documentation (Appendices E and F) required by MMS for each coastal political subdivision's initial project submittal. They noted that the form that the State requested from the parishes for project proposals is different from what MMS is requesting. The State hereby confirms that DNR's technical staff will continue to work closely with the coastal parishes to help ensure that the information contained in Louisiana's CIAP Plan will meet MMS's requirements.

Page 7, Section 6 – Per PACE's request, please clarify how a project could be approved (by MMS) as part of the state Plan and consistent with the requirements set forth in Section 31(d) (1) of the Act (Authorized Uses) and not be approved during the grant application and approval process. Will different criteria apart from the authorized uses be used to determine if projects are approved during the grants application and approval process? PACE has noted that the previous CIAP program, implemented through NOAA, worked very well overall, allowing projects to be constructed in a timely manner. They asked that steps be taken to mimic that program as much as possible; the State also encourages continued discussions between NOAA and MMS to make use of streamlining mechanisms that may have been developed during the administration of the previous CIAP program.

Page 7, Section 8 – For the reasons cited below, we are very concerned that MMS would require National Environmental Policy Act (NEPA) compliance prior to CIAP grant submission, and that MMS will not disburse any CIAP funds until all NEPA requirements are met.

A significant amount of engineering and design is required to obtain the project-specific information needed to adequately evaluate the likely impacts for many coastal restoration projects. Those tasks require a substantial amount of funding, which we consider to be an integral part of the implementation costs for CIAP-funded projects. For larger restoration projects, we also believe that it is more appropriate to evaluate design alternatives before assessing likely impacts, rather than preparing NEPA documents for such projects with a relatively small amount of project-specific information at an early phase of the project development process. Therefore, we recommend that MMS modify the proposed approach to issue grants including engineering, design and permitting costs (including the costs of developing appropriate NEPA documentation), but prohibit expenditures for actual construction until MMS has been provided copies of the completed NEPA documents. One variation of this approach is to issue separate grants for engineering/design and actual construction, but that approach will result in far greater administrative costs (in both time and money). We urge MMS to consult with grant administrators for other Federal programs, such as the U.S. Fish and Wildlife Service's North American Wetlands Conservation Act and the National Coastal Wetlands Conservation Grant Program; the NOAA Community-Based Grant Program; and others who have successfully implemented coastal conservation projects in Louisiana, in compliance with NEPA and other key regulatory requirements.

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Consistent with PACE's enclosed comments, we urge MMS to continue to explore and utilize mechanisms to streamline NEPA compliance for CIAP projects to the greatest extent possible. This will help reduce compliance costs and implementation delays, while meeting the intended purposes of NEPA.

Additional Comments - PACE also directed questions and comments to the State; those included: 1) whether parish CIAP allocations can be used for interaction with the bond commission, i.e., to leverage parish funds and to allow larger projects to be started and built without having to wait until all 4 years of CIAP fund allocations had been disbursed; 2) having the State prepare a map depicting the 1927 shoreline, delineating State and local government ownership, and helping parishes to determine potential project sites based on ownership and by locating key environmental features historic ridges and waterways; 3) having the Department of Natural Resources provide funding to parishes to assist with CIAP planning; and 4) extending the deadline for submitting CIAP project proposals for inclusion in the CIAP Plan. We are working with PACE and the individual coastal parishes to address those issues. We have extended the project proposal deadline to May 22, 2006, and we are providing technical assistance to the coastal parishes in the development of their project proposals and associated information. We will also host a May 5, 2006, workshop with PACE and MMS Regional CIAP Representative Stephanie Gambino to discuss the draft guidelines and other CIAP issues.

We look forward to continued cooperation with the MMS on this important program. If you have any questions regarding this matter, please contact David Frugé of our Office of Coastal Restoration and Management at 225-342-7615.

Very truly yours,

Scott A. Angelle
Secretary

SAA:DF:pso
Enclosures

cc: Stephanie Gambino, MMS, Gulf of Mexico OCS Region
Marnie Winter, Parishes Against Coastal Erosion
Sidney Coffee, Governor's Office of Coastal Activities
James R. Hanchey, LDNR
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David Frugé, LDNR