

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
(Corpus Christi)
No. 2:15-CV-00514**

FRIENDS OF LYDIA ANN CHANNEL,
)
)
)
)
Plaintiff,
)
v.
)
UNITED STATES ARMY CORPS OF
)
ENGINEERS, et al.,
)
Defendants,
)
and
)
LYDIA ANN CHANNEL MOORINGS,
)
LLC,
)
Intervenor-Defendant.
)
)
)

DEFENDANTS' NOTICE OF REVOCATION OF LETTER OF PERMISSION

By letter dated September 12, 2016, the U.S. Army Corps of Engineers (“Corps”) revoked the letter of permission (DA Permit SWG-2014-00460) challenged by Plaintiff in this case. *See* Ex. 1. The Corps previously suspended the letter of permission on March 23, 2016, as a first step in its reevaluation of the project. *See* ECF 32. The Corps has completed its reevaluation and determined the project’s purpose and need as stated by Lydia Ann Channel Moorings LLC (“applicant”), to temporarily moor barges and tugs to mooring dolphins, does not accurately describe the scope of the applicant’s actual operations or address the underlying need for the project from a public interest review perspective. Accordingly, the Corps revoked the letter of permission under 33 C.F.R. § 325.7. As a result, “the dolphins constructed pursuant to the letter of permission are no longer authorized and must be removed.” *See* Ex. 1. The Corps

has referred this matter to the United States Coast Guard pursuant to 33 C.F.R. § 245.20(a). *See* Ex. 2. The revocation letter further directs the applicant to submit a dolphin removal and restoration plan within 30 days of the date of the revocation letter, and further states the Corps' intent to conduct a public interest review and alternatives analysis to evaluate that removal and restoration plan.

Counsel for the Corps has conferred with counsel for Plaintiff, and these parties are engaged in settlement negotiations.

Dated: September 14, 2016

Respectfully submitted,

JOHN C. CRUDEN,
Assistant Attorney General
U.S. Department of Justice
Environment & Natural Resources Division
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611

/s/ Carol L. Draper
CAROL L. DRAPER
Trial Attorney (PA Bar # 39388)
Natural Resource Section
Telephone: (202) 305-0465
Fax: (202) 305-0506
Email: carol.draper@usdoj.gov

S. JAY GOVINDAN, Assistant Chief

/s/ Lesley Lawrence-Hammer
LESLEY LAWRENCE-HAMMER
Trial Attorney (DC Bar # 982196)
Email: lesley.lawrence-hammer@usdoj.gov

/s/ Alison C. Finnegan
ALISON C. FINNEGAN
Trial Attorney (NJ Bar #01264-2001)
Email: alison.c.finnegan@usdoj.gov
Wildlife & Marine Resources Section
Phone: (202) 305-0217; (202) 305-0500
Fax: (202) 305-0275

LANCE G. DUKE
Assistant United States Attorney
United States Attorney's Office
Southern District of Texas
Corpus Christi, Texas
Lance.Duke@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the attorneys of record.

/s/ Alison C. Finnegan
Alison C. Finnegan

Exhibit 1



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

SEP 12 2016

Executive Office

SUBJECT: Revocation of Letter of Permission SWG-2014-00460

Lydia Ann Channel Moorings, LLC
Attn: Mr. Christopher Pietsch
P.O. Box 60267
Corpus Christi, Texas 78466

Dear Mr. Pietsch:

This is in regard to your Letter of Permission ("LOP") SWG-2014-00460, issued on January 15, 2015 to construct 82 individual mooring dolphins. The project site is located off the east bank of San Jose Island adjacent to Lydia Ann Channel, a component of the Gulf Intracoastal Waterway in Aransas County, Texas.

Subsequent to the issuance of the Letter of Permission, USACE began to receive complaints that Lydia Ann Channel Moorings, LLC ("LAC") was not adhering to the terms of the LOP. Based on a site inspection and subsequent investigation, we have concluded that the LAC's stated purpose and need for the project, to temporarily moor barges and tugs to mooring dolphins rather than grounding barges on shore to reduce environmental impacts, does not accurately describe the scope of your operation or address the underlying need for the project from a public interest review perspective.

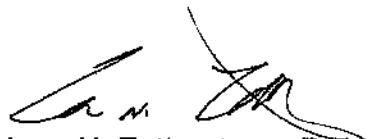
As you are aware, we initiated the necessary steps prescribed in 33 CFR § 325.7 and suspended SWG-2014-00460 on May 23, 2016 in order to review your stated purpose and scope. We have concluded our process, and after thorough consideration of the materials you submitted hereby revoke LOP SWG-2014-00460. As a result, the dolphins constructed pursuant to the LOP are no longer authorized and must be removed. Continued use of the unpermitted structures may constitute obstructions to navigation and USACE is referring this matter to the USCG pursuant to 33 C.F.R. § 245.20(a).

Due to the temporary impacts to navigation along a federal channel that will result from this removal, the USACE intends to conduct a public interest review and alternatives analysis to evaluate LAC's removal and restoration plan. Therefore, in addition to LAC identifying their preferred removal and restoration method, LAC will also provide an alternatives analysis of all available methods for removal of these structures. In addition, to assure that the environmental impacts are minimal, LAC must also provide the previously requested threatened and endangered species surveys, the surveys of seagrass and oyster beds; and a draft Biological Assessment for Section 7

- 2 -

Consultation with the U.S. Fish and Wildlife Service and National Marine Fisheries Service (NMFS). Please be advised, that if LAC proposes explosive demolition or any method resulting in a high volume of underwater sound for removal of the structures, coordination with NMFS pursuant to the Marine Mammal Protection Act and coordination with the State Historic Preservation Officer pursuant to National Historic Preservation Act will also be required. LAC will submit their removal and restoration plan within 30 days of the date of this letter.

Sincerely,



Lars N. Zetterstrom, P.E.
Colonel, U.S. Army
Commanding

Copy Furnished:

Mr. Craig Douglas
Smith, Robertson, Elliott & Douglas, LLP
221 West Sixth Street, Suite 1100
Austin, Texas 78701

Exhibit 2



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON, TEXAS 77553-1229

SEP 12 2016

Executive Office

SUBJECT: Notification of Revocation of Letter of Permission SWG-2014-00460

Captain, Tony Hahn
Captain of the Port
Port of Corpus Christi, Texas

Captain Hahn,

The above referenced Letter of Permission for certain mooring structures located within Lydia Ann Channel has been revoked. A copy of the revocation is enclosed. USACE has directed that these structures be removed.

As you know, USACE does not exercise jurisdiction over vessels which may utilize the moorings, authorized or not, unless such vessels constitute a hazard to navigation. Pursuant to 33 C.F.R. 245.2(a), the District requests the USCG opinion as to whether the barges currently moored on these structures constitute a hazard to navigation.

Sincerely,



LARS N. ZETTERSTROM, P.E.
Colonel, EN
Commanding

Copy Furnished:

Mr. Craig Douglas
Smith, Robertson, Elliott & Douglas, LLP
221 West Sixth Street, Suite 1100
Austin, Texas 78701