

**MINUTES OF THE  
SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY – EAST  
BOARD MEETING  
THURSDAY, MAY 15, 2008**

The regular monthly Board Meeting of the Southeast Louisiana Flood Protection Authority - East (Authority or SLFPA-E) was held on Thursday, May 15, 2008, in the Second Floor Hall of the Lake Vista Community Center, 6500 Spanish Fort Boulevard, New Orleans, Louisiana, after due legal notice of the meeting was sent to each member and the news media and posted.

Mr. Doody called the meeting to order at 1:07 p.m. and led the Board in the pledge of allegiance.

The roll was called and a quorum of the Board was present.

Present:

Timothy P. Doody, President  
Abril B. Sutherland, Vice President (left meeting at 5:30 p.m.)  
John M. Barry, Secretary (left meeting at 7:00 p.m.)  
David P. Barnes, Jr. (left meeting at 6:15 p.m.)  
Stradford A. Goins  
Thomas L. Jackson  
Larry A. McKee  
Ricardo S. Pineda  
Louis E. Wittie

Absent:

George Losonsky, Ph.D., Treasurer  
Sara Lee St. Vincent

**OPENING COMMENTS:**

Mr. Doody reminded everyone about the problems that the Board faces in trying to bring about the 100-year level of flood protection—and beyond that 500-year protection. Funding will be a huge issue. Local sponsors are being called upon to come up with the current cost share of \$1.8 billion. A bill has been introduced to reduce the local cost share to approximately \$1.3 billion; however, a decision has not yet been made. Borrow materials are another huge issue due to the quantities that will be needed and the costs and problems associated with locating, excavating and delivering these materials. Discussions are on-going concerning contractual language between the U.S. Army Corps of Engineers (USACE), Coastal Restoration and Protection Authority (CPRA), the State and local sponsors. Lands, easements and rights-of-way (a local responsibility and cost) is another huge issue. He noted, however, the biggest, unexpected problem is complacency, which is a feeling of quiet, pleasure or security often while unaware of some potential danger or defect—the danger is hurricanes and flooding, and the defect is the incomplete system. After Hurricanes Katrina and Rita, everyone was focused and worked together trying to assure protection from future

disasters. However, the farther away we get from the event, the more memories fade of exactly what happened and people move more slowly and not all together or with the same resolve. The USACE has assured the Board that the goal of finishing the 100-year level of protection by 2011 can be met. The long term goal is the 500-year level of protection. The region must stand together to meet these huge problems head on until the goals are met. A lesson of Hurricane Katrina was that although not everyone experienced flooding, the entire region was affected—emotionally, environmentally and economically.

Mr. Doody added, while the Board does not always agree with the USACE and has in the past been one of its harshest critics, it should be remembered that many of its military members have served overseas tours of duty and its civil employees live in our communities. We should remember the lesson, treat others as you would have them treat you.

The first presentation will be a review by the USACE of the Hurricane Protection System prior to the 2008 Hurricane Season, which will provide information on current dangers and risks and will hopefully keep everyone focused on the tasks ahead. The second presentation involves the residents along the 17<sup>th</sup> Street Canal. Mr. Doody commented that the involvement of the residents along the 17<sup>th</sup> Street Canal has been inspirational. The Board's decision on this issue will be difficult; however, whatever decision is made will have been carefully considered and the result of a process. He added, the Board owes a duty to the public and cannot shy away from its responsibilities.

#### **RESOLUTION #05-15-08-01 – ADOPTION OF AGENDA**

The agenda was amended to add two items: XIII.A.8 - Motion to request the Legislature to fund an additional appropriation of \$500,000 to the SLFPAGE, and XIII.C.2 - Motion to authorize the award and execution of a contract with the lowest bidder for State Project No. 750-44-0002, Lake Borgne Basin Levee District Improvements.

On the motion of Mr. McKee,  
Seconded by Mr. Barry, the following resolution was offered:

“A resolution to adopt the agenda, as amended, for the Board Meeting of May 15, 2008.”

The foregoing was submitted to a vote, the vote thereon was as follows:  
YEAS: Mr. Barnes, Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda  
and Mr. Wittie  
NAYS: None  
ABSENT: Mr. Losonsky

#### **RESOLUTION #05-15-08-02 – APPROVAL OF MINUTES**

On the motion of Mr. Wittie,  
Seconded by Mr. Jackson, the following resolution was offered:

“A resolution to approve the minutes of the Board Meeting of April 17, 2008.”

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda  
and Mr. Wittie

NAYS: None

ABSENT: Mr. Losonsky

**PUBLIC COMMENTS:**

Mr. Doody read a letter received from Senator Vitter and Congressman Scalise into the record:

“Dear Mr. Doody: We are writing to you regarding the upcoming discussion and possible vote by the Flood Protection Authority regarding the tree and fence removal proposal along the 17<sup>th</sup> Street Canal. As you are aware, the 17th Street Canal Coalition has been in contact with our offices regarding developments along the canal.

“Although residents have expressed numerous questions and concerns, their concerns over the effective loss of use of their property with no compensation is the topic that we hear about most often. In order to address this compensation issue, Representative Nick Lorusso introduced HB 1219 in the regular session of the Louisiana Legislature. It is our understanding that the bill has gained strong support within the legislature and has also gained a great deal of support from many others. New Orleans City Council President Arnold Fielkow traveled to Baton Rouge on Monday to support the bill, which was reported favorably out of committee. It is expected to be brought before the full House soon.

“We value your service and share the commitment of you and your fellow board members to continue to upgrade our protection system against storms such as Hurricane Katrina. However, as we move forward, we believe it is imperative that we consider the rights of those who stand to lose real property. Given the fact that the Legislature is weighing in on this issue, we ask that you consider either delaying your vote or clarifying that no work is to begin until the Legislature has had a chance to act on this issue.

“We appreciate the responsibility and demands that your service requires. Please know that we wish to continue our strong working relationship and we ask that you please keep us informed of ways that we may be helpful to you and your fellow board members.

“Sincerely, David Vitter, United States Senator / Steve Scalise, Member of Congress”

Mr. Doody next read a letter from Senator Mary Landrieu addressed to Colonel Alvin Lee, District Commander, USACE:

“Dear Colonel Lee: Recently, I was contacted by Dante Maraldo of the 17th Street Canal Coalition. In his letter, which I have enclosed, Mr. Maraldo points out that the

Corps of Engineers is attempting to expropriate land along the canal without compensating homeowners.

“Obviously, this report is concerning. I understand that the safety of the levees is the primary objective of the Corps of Engineers, however, citizens who have already suffered so much should not be divested of their land without compensation. I would appreciate it if you would, at your earliest convenience, look over Mr. Maraldo's letter and copy me on the response. I would also appreciate a copy of your plan for tree and fence removal along the 17th Street Canal, an estimate of how many homes and yards will be affected by this plan, and what, if any, compensation will be offered.

“With kindest regards, I am, Sincerely, Mary Landrieu, United States Senator”

Comments were called in for Senator Ed Murray “to request the Board to respect the citizens’ right to compensation” and Representative Nick Lorusso “to please support HB 1219 and citizens’ property rights”.

Nathan Abercrombie appeared on behalf of Rep. Nick Lorusso and advised Rep. Lorusso would be forwarding a letter to the Board in support of the 17<sup>th</sup> Street Canal Coalition (Coalition). He added, Dante Maraldo is here on their behalf and that, obviously, with Rep. Lorusso proposing the House Bill, he does support the homeowners. He advised that Rep. LaBruzzo has also written a letter.

Edward Feinman commented his main concern is the USACE’s inconsistency. At the end of April he received a letter advising the USACE was interested in trees and woody vegetation. However, a final letter was received last Friday advising the USACE wants to take out all his vegetation, a brick pile and a tree that is a couple of inches outside of the USACE’s zone. His concern was that once the Board grants the USACE authority, there will be no stopping them.

Warren J. Nolan, Bellaire Drive resident in Lakewood South and Coalition member, voiced his support for everything that the Coalition will present today. The USACE stated it is removing everything on his property within the levee toe plus six-feet. He showed a drawing indicating the USACE’s line for the design section and the location of the overbuilt portion. He said his trees and fence are shown in the overbuilt section about 7 to 8 feet above the toe of the levee. USACE regulations encourage municipalities to put vegetation in an overbuilt section, provided it does not interfere with the design section, which is inconsistent with what the USACE is doing. He expressed this inconsistency to the USACE and they advised they would look into this situation; however, a resolution of this issue has not been received. He commented there are so many inconsistencies and so many things that are incorrect that should the Board give the USACE the opportunity to come in soon, they will do the homeowners an injustice by removing things that are not a threat to the structural integrity of the levee or flood protection device. He asked the Board to put off this decision and request that the USACE furnish proper information to the Board and homeowners.

Jerry Plough, Jill Hickson, representing New Orleans Council President Fielkow, Kathleen Zuniga, Denise St. Pierre, J. Miles, George Byram, Terry Arrigo, Karen Daray and Dennis Daray deferred their time to the Coalition.

Bob Keller commented that the USACE needs to develop a final and well thought out plan, being sensitive to property owners and their property rights, and do whatever possible to compensate people should their property be taken. However; the bottom line is whatever plan or action is necessary must be done to protect the citizens of New Orleans from another catastrophic flood.

Craig Berthold, Bellaire Drive resident and Coalition member, commented that he stands to loose over 10 percent of his total property. He recently put up a \$2,000 fence to enclose his pool. He asked Board members to put themselves in his position.

Arthur Sargent, Coalition member, advised that at the end of last week residents were invited to attend a meeting at the USACE's headquarters at which there was to be design engineers and information provided about the design, layout and instructions provided. However, the USACE did nothing more than present the same information that had been presented over the past 2-1/2 years. He requested some means to meet with the USACE again and for residents to be provided with the technical details of the overbuilt levee section, along with a comparison with other levee sections, including the west side of the 17<sup>th</sup> Street Canal. He voiced his support of the Coalition.

Epsie Hennesy commented she is for flood control and protection. She reviewed comments that residents have been told over the past couple of years: i.e., there may not be a need to bother the properties on the overbuilt levee because its so big (Mr. Stout); the USACE would meet with each property owner on his property before taking action and would treat each property individually; the USACE would provide information soon (three months later a piece of paper was received); the USACE is just doing the dirty work for the levee district; fences are not a threat to the levee (Mr. Herr); trees did not cause the breaches on any of the outfall canals; we do not wish to take any action but are being forced by the USACE; the Board has received more information from the residents concerning this issue than from the USACE (Mr. Wittie); the walls are a non-issue because of the pumps at the mouth of the canal (Col. Waggoner); we are not taking your property, but you can't fence it or use it; maybe in a couple of years you'll get your property back (Mr. Herr); there will be no decision on this issue until after a decision on the pumps at the mouth of the canal; when asked if there was another way to solve this problem, they were told, yes, but it's too expensive and they would prefer to take the property; and the canal is safe and we would have done something more to fix it if it was necessary. She stated Frank Boykavich volunteered at the meeting on Monday that the levee behind Mrs. Byram's house is strong and there was no seepage; she added there was no need to touch her property.

Brook Andry, Coalition Vice President, advised she owns two properties on Bellaire Drive. Her legal research indicates that this Board does not have the power or authority to grant anyone, including the USACE, permission to go onto her property. She commented she is in favor of levee protection, but not at the expense of property owners; if properties are to be taken, the owners should be paid and compensated

accordingly. At the April 16<sup>th</sup> Committee meeting a USACE representative advised that after the levee was staked a representative would meet with individual property owners and inform them about the plan; however, she stated she has not received anything by mail, nor has anyone met with her. A heads up e-mail was received regarding Monday's meeting and advising a letter would be sent; however, the letter was not received. The USACE would like to take two to three feet on one property and five to six feet on the second property. She asked the reason for the inconsistency in the theoretical levee toe since the waterway is straight. If the fence is moved, the USACE wants to dictate within so many feet of her property what can and can't be done. Louisiana laws are designed to protect property owners and their use and enjoyment of their property.

Carol Byram, Bellaire Drive resident, advised she stands to lose 1,200 square feet of property and 44 trees. Mrs. Byram commented on the USACE's taking of this land and asked the Board to consider the rights of the property owners. She voiced her support of the Coalition in everything it is doing.

Terry Lonatro asked how could the residents be expected to work with the USACE in a spirit of cooperation when they are going to just come in and take their property.

Roy Arrigo, Bellaire Drive resident and Coalition member, commented that with the temporary gates at the lake and equal pumping capacity, the 17<sup>th</sup> Street Canal is not a link in the City's flood protection. He asked the Board to consider the residents when voting.

Melissa Arrigo, Bellaire Drive resident, requested that the Board be fair to the residents and not vote to take property until the property owners are compensated.

Charles Chassignac clarified he did not live along the canal nor was he a member of any coalition, but is a lifetime resident of the City. He reminded the Board that there is a whole city at stake and that residents can receive compensation due them at a later time. He did not want for anyone to experience a repeat of the Katrina flooding and related some of those experiences. The City got together as a whole after Katrina and agreed the first thing needed was to secure the City. The public voted to have this Board make some very difficult decisions, such as the one today. He asked that the Board consider not only the rights of these property owners, who may be able to receive compensation later on, but the whole City and not to continue deferring a decision. Issues that are dear to the property owners are still being discussed three years after Katrina; however, there is a much bigger issue, that is, the protection of lives in the City of New Orleans. He asked that the Board act on this measure, allow the USACE to do their business, and whatever follows later through the House Bill that is under consideration will be worked out in the process.

#### **Presentations:**

##### **1. Current State of the Hurricane Protection System (John Meador, U.S. Army Corps of Engineers).**

Karen Durham-Aguilera, Director of Task Force Hope and a member of the Army Senior Executive Service, explained that she is assigned to the Mississippi Valley Division, which is headquartered in Vicksburg and oversees all USACE work throughout the Mississippi River Valley. However, due to the size, complexity and importance of this program she has been placed here full time and is residing in this area.

John Meador, Deputy Director of Task Force Hope, presented an overview of the New Orleans Hurricane Storm Damage Risk Reduction System, which included the state of the system, status of construction, intended improvements for this year, preparedness for the 2008 hurricane season and risk communication.

The Hurricane Storm Damage Risk Reduction System consists of approximately 350 miles of levees and floodwalls. The preliminary projects were the Lake Pontchartrain and Vicinity Project and the West Bank and Vicinity Project. The USACE's first mission and commitment was to repair storm damages and make the system whole again. The conclusion was reached after Katrina that New Orleans no longer had 100-year protection, which is a FEMA flood insurance program requirement. Therefore, the Administration committed to strengthening and improving the system to insure the 100-year level of protection for compliance with the national flood insurance program. A study is underway to provide higher levels of protection for the Greater New Orleans area.

Mr. Meador discussed the state of the system, which is in better condition today than prior to Katrina. Great progress has been made towards achieving the 2011 goal for the 100-year level of protection. Utilizing an IPET study, information was provided to the public on risk reductions relative to the one percent storm surge probability based on work that was accomplished.

The current appropriation is \$7.1 billion and an additional \$5.7 billion is requested in the President's budget. The current estimate for the program is \$14.6 billion—the total federal investment of \$12.8 billion, plus the local cost share.

The status of construction was reviewed: 325 contracts are slated for execution of the mission; 150+ contracts (totaling \$2.1 billion) have been awarded and 47 construction contracts (totaling \$1.4 billion) are underway.

For 2008 and beyond: The largest civil works design-build contract in USACE history (\$700 million) was awarded on the Inner Harbor Navigation Canal (IHNC) Surge Protection to Shaw Environmental and Infrastructure (E&I). This project includes advance measures for accelerating risk reduction. Forty-plus additional contracts (totaling \$2 billion) are anticipated to be awarded (approximately 30 contracts directly relate to levees, floodwalls and armoring work, three to pump station repairs and three to interior drainage).

The IHNC Surge Protection Project will provide surge protection to three areas within the Greater New Orleans area; i.e., New Orleans East, St. Bernard Parish and the New Orleans Metro area. The concept at this point is for a barrier with some type of gate configuration on the eastern end. Shaw E&I's subcontractors are principally all

Louisiana based entities. Part of the work that is initially underway is the advance measures which are anticipated to provide a significant reduction in risk within the three aforementioned areas. The advance measures will be an integral part of the final protection anticipated to be in place by the height of the 2009 hurricane season.

2008 Hurricane Season System Improvements were reviewed. Since the time of the IPET study, many lessons were learned and improvements made to the design criteria for improving the system and for future work. Safe houses will be constructed in Jefferson Parish, transitions between armored floodwalls and earthen sections of the system will be improved, non-federal pump stations repairs are underway, storm proofing of pump stations in Jefferson and Orleans Parishes is underway, and the grass situation along MRGO addressed to prevent erosion, in addition to the levee and floodwall construction contracts previously mentioned.

Protection has met or exceeded pre-Katrina levels since June, 2006. Last summer maps from IPET risk studies indicated reductions in flooding risks throughout the city; however, more in some areas than others. The maximum reduction in the one percent surge protection event is about five-feet over what was in place prior to Katrina. The outfall canal closure structures are in place with a total pumping capacity at each structure of approximately 16,000 cfs. The London Avenue Canal Load Test enabled the raising of the safe water elevation to 5-feet and increasing the interior pumping capacity by 30 percent. Levee raising projects are underway throughout the system in St. Charles, Jefferson, Orleans, St. Bernard and Plaquemines Parishes. Floodwall construction and stabilization is underway in some contracts to provide the 100 year standard.

The USACE' s key message is that public safety is its number one priority and it is ready and prepared for hurricane season. The system is stronger and better, however, risk reduction is not complete. Protection is being built as a system with a 2011 target for completion. Some neighborhoods are at greater risk of flooding than others, principally because of on-going work and the probability associated with surge adjacent to the levees.

The USACE has conducted a number of emergency work shops, along with hurricane exercises and drills with its stakeholders and partners. Emergency procedures and better equipment are in place. The outfall canal pumps have been tested and computerized system monitors are in place to monitor water levels in the canals remotely.

Upcoming events were reviewed. A presentation will be made on May 30<sup>th</sup> at the Jefferson Parish Hurricane Summit. On June 3<sup>rd</sup> the USACE will hold a media tour on the status of the system and a Joint Communication Advisory Council Press Conference will be held. An Emergency Preparedness Day will be held on June 14<sup>th</sup>, which will be a USACE sponsored public event in Audubon Park. Participation has been requested by a number of entities from State, local and Federal governmental aspects to insure communication with the public, as well as to provide information to better inform the public about risk reduction in the system.

Mr. Meador emphasized that although the system is stronger, there will always be risks. The 100-year level of protection is anticipated to be completed by 2011 and even higher levels of protection are being studied. He stressed that the public should heed evacuation orders by public officials should an event come along that is believed may exceed the system's capacity.

Mr. Meador concluded the presentation by providing websites for additional information:  
Task Force Hope Newsletter:

[http://www.mvn.usace.army.mil/hps/Status\\_Report\\_archive.htm](http://www.mvn.usace.army.mil/hps/Status_Report_archive.htm)

To assess risk as of 1 June 2007: <http://nolarisk.usace.army.mil/>

To assess risk as of 1 June 2011: <http://www.mvn.usace.army.mil/hps/100maps.htm>

Mr. Goins commented that he was not in 100 percent agreement that public safety is the number one priority and that budgets seem to be the controlling factor. He cited as examples the need to address extending the life of the Industrial Canal floodwalls, improving the outfall canal floodwalls, the problem of the above ground elevation of the water level in the Orleans outfall canals and the permanent protection at the Lake.

Ms. Durham-Aguilera stressed that public safety is the USACE's first priority, along with engineering integrity and quality. She explained after the initial build, there will be a need for periodic maintenance through additional lifts. Hurricane Katrina demonstrated the failure of parallel protection along the drainage canals. Studies on the floodwalls are on-going. Investigations must be completed and then decisions made as to what needs to be done. She noted that the USACE had moved money for the award of the IHNC Surge Protection Project in April.

Mr. Barry advised he had heard that the system was roughly at the 33 year level of protection and asked for comment.

Ms. Durham-Aguilera explained that some parts of the system is close to the 100-year level; however, other parts of the system are below the 33 year level. The advance construction element in the IHNC Surge Protection Project contract will raise part of the system's level. She could not say what the current level is for the system as a whole.

An update on the grass situation along the MRGO was requested. Colonel Alvin Lee, USACE New Orleans District Commander, advised that the USACE has been working with LSU and looking at the contract grass specifications. He was confident that the input received will make the grass part of the levee cover more effective and help with some of the erosion problems.

Colonel Jeffrey Bedey, USACE Hurricane Protection Office Commander, added, the USACE is working in conjunction with the Lake Borgne Basin Levee District on erosion control and a contractor is in the process of seeding and fertilizing. The USACE is continuing to work on the technical criteria to perfect grass growth.

Mr. Pineda commented the ultimate goal is protection against a Category 5 Hurricane. The first stage towards the ultimate goal is the repair of the existing system and assuring the best operations and maintenance are being done. The second component

is the 100-year level of protection. He explained the statistics relative to a 100 year event; it is not one chance in every hundred years—it is a one percent chance in any one year. Mathematically, it computes to a 26 percent chance of having a 100 year or bigger event over a thirty year period, and a 33 percent chance of having a 100 year or bigger event over a fifty year period. Therefore, 100 year protection is not enough. The last component is Category 5 protection, which will involve a huge study and effort, and will be difficult to achieve. He urged the USACE and local and State authorities to make the completion of the LaCPR a top priority, using good logic, science and engineering, so that the ultimate goal may be constructed and completed in the next 25 to 40 years.

Ms. Durham-Aguilera concurred the immediate goal is the 100-year level of protection, which the USACE is working towards as charged by Congress. However, Congress has also charged the USACE with the LaCPR (Louisiana Coastal Protection and Restoration), which is a higher level of protection utilizing multiple lines of defense and involves structural and non-structural solutions and environmental components. The USACE is pushing hard to get this report completed. A peer review is currently ongoing by the National Academy of Sciences on the draft report and the USACE has already received some feedback from the Academy. The USACE will drive to complete the technical report by the end of this year; however, it will need to go through the clearance process before going to Congress. Recommendations for implementation will accompany the technical report. All the projects will need funding appropriated. Some projects will already have existing authorities and can be implemented once funding is appropriated, while other projects will need more study or future authorities. The technical report will delineate types of possible alternatives. She pointed out this is a huge public process with numerous stakeholders weighing the alternatives.

Mr. Goins asked Ms. Durham-Aguilera about the model assumptions and the detailed report on London Avenue Load Test.

Ms. Durham-Aguilera explained the USACE had received enough information on the London Avenue Load Test in order to make a decision; however, it is following up on obtaining the final detailed report. She advised the modeling forms the basis of everything the USACE is doing and there would be follow up with Mr. Goins on this issue.

Ms. Sutherland stated a comment was made earlier that the 17<sup>th</sup> Street Canal floodwalls were no longer a part of the hurricane protection system and asked for Ms. Durham-Aguilera's response to that comment.

Ms. Durham-Aguilera explained that every component is part of the system. She said she did not want to give the impression that one component can be taken out and it not have an effect. The USACE has put in the outfall canal gate closures and the temporary pumps, and is working on a permanent pump solution; however, as far as the 17<sup>th</sup> Street Canal is concerned, there is a lot more going on here than just saying it is not needed to contribute to the system.

## **2. 17<sup>th</sup> Street Canal Tree and Fence Removal Program (Dr. Donald Gray representing homeowners)**

Mr. Doody advised that Representative LaBruzzo's letter had been received. Also, USACE representatives were requested to attend this meeting to answer the Board's questions on the right-of-entry issue.

Dante Maraldo, Bellaire Drive resident and Coalition President, advised he just presented an August, 2007, Times Picayune article to Ms. Sutherland regarding the 17<sup>th</sup> Street Canal comment. The 17<sup>th</sup> Street Canal Coalition was formed after the April Board meeting. The organization is comprised of residents living along the 17<sup>th</sup> Street Canal in Lakewood South and North and concerned citizens throughout the greater New Orleans area. Its mission is to support stronger flood protection without the unlawful seizure of private property. It has obtained the support of local, State and Federal officials who are also in favor of strong, safe levee protection without the unlawful taking of private property. The requested plan by the USACE before the Board today is not only inadequate, but the residents have strong scientific evidence that this plan will actually weaken the existing protection.

Mr. Maraldo stated that the USACE has requested a 24 hour a day / 7 day a week right-of-entry for use of property along parts of the 17<sup>th</sup> Street Canal in order to implement its Tree and Fence Removal Program. The USACE is actually misleading people by calling it a Tree and Fence Removal Program; it is actually an unlawful taking of property program. In addition to the loss of trees, fences and permanent structures, this program will result in many of the residents along the 17<sup>th</sup> Street Canal losing 30 to 35 feet from their rear property line, or an equivalent of 1,200 to 1,400 square feet per property without compensation. The residents will be prohibited from using their property in any manner at any time; however, they will still have to maintain the property, pay property taxes and mortgages, and be liable for accidents on the property.

The USACE maintains that the homeowners are not entitled to any compensation for the taking of their property under Louisiana State law and cites two statutes. However, the USACE is intentionally misrepresenting and misusing those statutes. The USACE believes that if it keeps repeating that it has a statute supporting its position, it will somehow become true. The Legislature acted in 2007 to amend the statutes referred to by the USACE; however, the USACE ignored those amendments.

Representative Nick Lorusso introduced House Bill 1219 to again address the USACE's conduct. H.B. 1219 amends the two statutes being relied upon by the USACE (R.S. 19:14 and R.S. 38:225) to clarify and show that the Legislature never intended for private property along drainage and outfall canals, such as the 17<sup>th</sup> Street Canal, to be taken without compensation. On May 12, 2008, several members of the Coalition testified before the House Committee on Civil Law and Procedure in support of H.B. 1219. New Orleans City Council President Arnold Fielkow also testified in support of the Coalition and H.B. 1219. After testimony by members of the Coalition, Council President Fielkow addressed the Committee and commented that he was amazed that the USACE was attempting to take private property along the 17<sup>th</sup> Street Canal based solely on a Louisiana statute that applies only to riparian lands or lands along a navigable waterway. He reminded the Committee that during recent federal litigation, the USACE strenuously argued and established that the 17<sup>th</sup> Street Canal is not a

navigable waterway, but is rather a drainage and/or outfall canal. The USACE's classification of the 17<sup>th</sup> Street Canal as a drainage or outfall canal allowed it to escape liability for the City's flooding following Hurricane Katrina. He stressed it is patently unfair for the USACE to argue that the 17<sup>th</sup> Street Canal is a drainage and/or outfall canal to escape liability and then turn around and argue that it is a navigable waterway in order to take private property without compensation. USACE representatives were present at the Committee meeting; however, they did not speak or fill out cards in opposition. The Committee unanimously passed H.B. 1219. Several members of the Committee voiced strong support for the Coalition and wished it well in its efforts in trying to deal with the USACE.

H.B. 1219 will be brought before the full House sometime next week and will then go before a Senate Committee and finally the full Senate. Former State Senator Steve Scalise had signed on as a co-author of H.B. 1219; however, since his election to Congress, he will be moving to Washington, D.C., but has pledged to continue his support of H.B. 1219. The Coalition has spoken to Senator Ed Murray and he is interested in joining as a co-author of the bill with Rep. Lorusso. Sen. Murray's interest in co-authoring H.B. 1219 demonstrates that this is a bi-partisan effort and an effort to address what the USACE is doing and remedy this wrong.

Mr. Maraldo stated that Rep. LaBruzzo spoke to Coalition members after his testimony before the Committee and stressed his support for the organization and H.B. 1219, pledging to assist the Coalition in its efforts. Rep. LaBruzzo confirmed that based on his discussions with legislators from across the State of Louisiana, it is clearly understood that the statute the USACE is relying upon was never intended and does not apply to drainage and outfall canals, such as the 17<sup>th</sup> Street Canal.

Mr. Maraldo advised he received a phone call from Robert Bailey, Projects Coordinator in Senator Mary Landrieu's office. Sen. Landrieu is very concerned about the USACE's conduct and requested that Mr. Bailey contact the USACE through Col. Lee to inquire about its proposed actions along the 17<sup>th</sup> Street Canal and its purported authority for those actions. As of this morning a response has not been received. The Coalition has also worked closely with Senator David Vitter's office. Sen. Vitter has expressed grave concern over the USACE's conduct on the 17<sup>th</sup> Street Canal and his office has attempted to facilitate communications between the USACE and residents.

Mr. Maraldo advised Rep. Lorusso, Rep. LaBruzzo and Council President Fielkow were unable to attend this meeting. However, Council Member Shelly Midura was present and would speak following the presentation and present a resolution to the Board that was unanimously passed earlier today by the New Orleans City Council. Council President Fielkow's Chief of Staff, Jill Hickson, was in attendance, but had to leave; however, she asked that the Council President's support for the Coalition's position be reiterated. Nathan Ambercrombie, a staff member in Rep. LaBruzzo's office, addressed the Board earlier on his behalf and provided a letter from Rep. LaBruzzo to the Board. Wes Kungel, Sen. Landrieu's Regional Representative, was at the meeting to monitor and help address the situation. David Doss, Sen. Vitter's Southeast Regional Director, and Charles Henry, Congressman Scalise's Deputy Chief of Staff, were also present.

He hoped today's presentation and the individuals present today demonstrated the support the Coalition has been able to obtain for its position.

Mr. Maraldo explained the Coalition's members appreciated the difficult position in which the USACE has placed this Board. The Coalition has been informed that some members of the Board are not as concerned about the legal issues or the positions of the elected officials and see its sole duty as flood protection. He indicated Dr. Gray would address that issue in his presentation. The Board's bylaws provide in Article III, Section 7 that its duties include the perfecting of a comprehensive levee system. He stated, if the Board grants the USACE's request for right-of-entry and right-of-use, it would not be fulfilling that duty. The USACE is used to getting what it wants, when it wants, and does not like to be questioned or challenged. It is the Coalition's understanding that the USACE is taking the position that if compensation must be paid to the property owners, it must come out of the Board's budget and not the USACE's practically unlimited budget.

Mr. Maraldo advised that the USACE is also putting out misleading and deceiving press releases to generate public support against the residents along the 17<sup>th</sup> Street Canal. It was reported in this morning's Times Picayune that the USACE told the media that it has offered to remove trees and fences at full federal expense in the area where the canal floodwall/levee failures created most of Katrina's catastrophic flooding, and that elsewhere this work must be paid for by the levee districts and local governments; further, if the authority does not give the USACE its requested permit, that will happen here as well. He indicated the USACE has left out some key information. First, the USACE's statement implies that trees and fences contributed to the canal floodwall/levee failures. The USACE failed to report that it does not have any evidence that trees or fences actually contributed to the canal floodwall/levee failures. He added, or at least, it has not been presented to the Coalition. Second, the USACE conveniently forgot, or failed to tell the media that its offer to remove trees and fences at full federal expense applies only if this Board approves the USACE's unlawful taking of tens of thousands of square feet of private property without compensation.

The Coalition has also been advised that the USACE has threatened to walk away and let the Department of Transportation and Development decertify the levees on the Board's watch, unless it gives the USACE what it wants. The USACE attempted to implement its program on December 16, 2007, in Oregon and residents formed against them. Regulators said that they had no choice and if the trees stayed, the USACE would decertify the levee protecting residents from the rising waters of the Columbia River. Without certification the residents would lose their flood insurance. He stated this type of conduct is unconscionable.

On Monday, May 12<sup>th</sup> the USACE held a meeting, which was scheduled just four days earlier, with some of the residents to tell them just how much property it would be taking. The letters announcing the meeting on Monday were mailed the Friday before and did not arrive in time for many of the residents to attend. The USACE also scheduled this meeting on the same date it knew residents would be traveling to Baton Rouge to testify in support of H.B. 1219. Thus, the vast majority of the residents did not

know about this meeting, were unable to attend the meeting because of the extremely short notice, or had conflicts known to the USACE which prevented their attendance.

Some residents at the USACE meeting on Monday asked whether there was any viable alternative to the unlawful taking of private property. A USACE engineer acknowledged that there are several viable alternatives, such as the use of rocks on the floodside of the levee and sheet piling, which would not result in the taking of private property. He also admitted that these alternatives would actually offer greater flood protection than the program proposed today to the Board. When asked why these alternatives were not being presented, he told the truth—money. The USACE is presenting its unlawful taking of property program because it is the least expensive alternative to the USACE. The criteria being used is the least expensive, not perfecting a comprehensive levee system. He urged the Board to ask the USACE why these alternatives had not been presented.

Mr. Maraldo advised the USACE has been implementing this least expensive alternative across the country by using the flooding it caused in New Orleans after Hurricane Katrina as the excuse for the need for this program. It was made clear that the USACE simply could not afford to make an exception for New Orleans. The USACE also does not want to set a precedent that would impact its attempts to push this program into other locations. The USACE is more interested in implementing its program nationally than it is in providing the New Orleans area and this region with the best flood protection possible. Mr. Maraldo stated the USACE is asking this Board to compromise on flood protection so that it can further its national agenda. He stated this is unacceptable to the Coalition and the Authority would not be perfecting a comprehensive levee system. If the Board votes today for the USACE's current proposal, each member will be remiss in its duties and the people of New Orleans will likely hold it responsible for enacting an inadequate levee protection system, even though it is merely being deceived by the USACE. He stated the USACE has deceived people for 40 years by saying we had the best protection possible; however, that was not the case. Nothing has changed in the USACE's make-up since Hurricane Katrina. For what the USACE has done to the City of New Orleans and this region, it is owed the best flood protection alternative. Also, for all the work and time this Board has put in, the USACE owes the Board the opportunity to present this region with the best flood protection alternative, and by the USACE's own admission, the best alternative is not before the Board.

The 17<sup>th</sup> Street Canal Coalition was formed to shown the Board and USACE that the residents are united and has the support of City, State and Federal officials. Mr. Maraldo stressed the Coalition wants stronger flood protection without the unlawful seizure of private property. Other neighborhoods are joining in this concern. The USACE has improperly done this on the London Avenue Canal. The Coalition is being contacted by citizens along the Orleans Avenue Canal and residents along outfall and drainage canals throughout the State who are concerned about what is going on here.

Mr. Maraldo asked the Board to deny the USACE's request and make them come back with the best flood protection alternative. Alternatively, he asked that the Board defer ruling until after the current Legislative Session to allow the Legislature time to once again clarify for the USACE its intent or defer the implementation of the program until

after the current Legislative Session, as requested by the representatives, senators and the New Orleans City Council. He further advised that the Coalition is trying to work out this issue and litigation would be a last resort; however, they were prepared to move forward and have counsel. He pointed out that there is nothing to enjoin until the Board votes.

Ms. Sutherland asked Mr. Maraldo exactly what was it that the Coalition wanted—compensation or for the trees to remain?

Mr. Maraldo replied the Coalition wants the best flood protection possible, which they believe can be provided without the taking of private property with rocks or sheet piling, and that two homes in Lakewood North have had this protection provided for them.

Mr. Barry expressed his disappointment in the reported lack of responsiveness by the USACE. He pointed out that although the USACE was talked about as having billions of dollars, money is not easy to come by. He added, sometimes you cannot always get the best solution and other times only the best solution can be accepted. However, the threat to decertify a levee is in reality a pretty, big stick and the entire City would suffer significantly if this levee is decertified in terms of outside investment, insurance and national perception. He asked how could the Board responsively run the risk of having the USACE decertify a levee with all the negative ramifications.

Mr. Maraldo replied that the USACE did not follow through with its threat in Portland, Oregon, and the comment was made in the context of showing how far they would go. Relative to the issue of money, the USACE has access to more funds than the Board and the means to come up with the funds to compensate the home owners. His point was that it was unconscionable for the USACE to force this matter and then tell the Board if it wants to do the right thing, it would have to come up with the money.

Mr. Doody pointed out that the residents have been instrumental in having the centerline of the levee section significantly moved towards the canal; therefore, the USACE has made some effort.

Mr. Maraldo stated that residents believe levee certification can be retained by the Board forcing the USACE to come back with the better and proper alternative of using rocks and sheet piling, which has been implemented in part along the canal. This would satisfy everyone's concerns, except the USACE who would then have to engage in a program where it would not be obtaining private property without compensation. He reiterated the USACE owes it to the residents and the Board to do the right thing, especially after what it put the city through, and that the criteria used should not be the least costly to the USACE.

Mr. Pineda clarified the issue of fences, trees and bushes falls under the USACE's ICW (Inspection of Completed Works) program. There is a box for checking operations and maintenance relative to levee certification, which is the link to FEMA. Should an unacceptable rating be received, it is considered by FEMA as not having the proper operations and maintenance being done, and FEMA places it in a flood zone. Levee districts on the west coast of the country have received unacceptable ratings and have

been expelled from the USACE's program. The levee districts were given until March, 2007, to come up with a plan to correct the deficiencies noted 90 days beforehand and a deadline of March, 2008, to complete their plan. The process has begun in other USACE districts around the country; therefore, this is not a threat, but a reality.

Mr. Maraldo responded, if the USACE believes that its program has merit, it can always expropriate the necessary property, pay the residents the fair market value, take what it wants and do what it needs. The fact that the USACE will not proceed with this program unless it can take private property without paying compensation speaks volumes to the residents as to the lack of merit of that program.

Mr. Barry commented he understood the emotional attachment to trees and the like, and that the relationship between the USACE and the residents has not been the best. However, as pointed out earlier, the USACE has been able to move the line significantly in favor of the residents. He added, it is a different USACE than before Hurricane Katrina and that some of the comments have been unfair.

Mr. Maraldo responded, the residents were basing their comments and position on the way they have been treated by the USACE, which is differently than the way the Board has been treated. He added, the USACE has repeatedly stated it would meet with each property owner at the property site to review what was to be done. Monday's meeting with the USACE apparently was that meeting. This has made it difficult to get a straight answer, make sense of mis-statements and conflicting information, and have an opportunity for dialog.

Mr. Goins asked, relative to other options, whether residents would be receptive to allowing the USACE to remove trees without the taking of land.

Mr. Maraldo replied he would have to discuss this question with the residents; however, an answer to this question would be pre-mature prior to Dr. Gray's presentation.

Ms. Sutherland commented the Board is supposed to be immune to the type of political influence that the Coalition is attempting to use to persuade it. While the Coalition's support is impressive, the Board cannot make a determination and decision based solely on influence. The Board was not included in the development of legislation. Therefore, the Coalition is addressing its interests, when there are competing interests and possibly a middle ground could have been found had the Board been invited to bring the competing interests to the table.

Mr. Maraldo replied the support of the elected officials was demonstrated not to bring political influence, but to show the Board these individuals have heard from their constituents and are representing their constituents of this mind-set. Information relative to Rep. Lorusso's drafting of legislation was provided at the last Board meeting and Ms. Sutherland was requested to call him to include the Board in the process. He noted the Board can still work with Rep. Lorusso on an amendment to the legislation. The Board at the last meeting stated it had a request before it that it had to either approve or deny. Residents were not told that they could present a middle ground. Therefore, if the Board's only choice is to approve or deny the request, the residents are

asking that the request be denied for the reasons presented. He added, the residents have presented a middle ground; i.e., the best possible protection available through the placement of rocks and sheet piling and leaving the private property alone.

Mr. McKee emphasized that the thought put into any decision by the Board is not shallow and incorporates the long term repercussions that may occur from the decisions that it makes today. He had serious concerns about the repercussions and future activities by this Board based upon the decision before it today.

Mr. Maraldo advised he understood what the Board has stated about the legal issues and deferred to Dr. Gray on the tree issues. He hoped the Board would take away from today's meeting that the Coalition and the residents have mobilized to try to show their willingness and efforts to be involved in the process and give the Board alternatives.

Mr. Hennesy requested that the Board consider two points. First, from an engineering view point the USACE has not drawn the lines where they could be drawn. If the lines were drawn in accordance with safe engineering principals and proper slants on the slopes, the theoretical levee toe would be off private property. Second, Dr. Gray would show that removing the trees and stumps would make the levee less cohesive and end up with less integrity. Therefore, what is proposed by the USACE would result in less flood protection and weaker levees. He stated he has spoken with Sen. Landrieu's and Sen. Vitter's offices and that the Louisiana delegation would never let the levees be decertified. He then introduced Dr. Gray.

Dr. Donald H. Gray began his presentation by advising he is a civil engineer specializing in geotechnical engineering with a focus on slope stability and the influence of woody vegetation. His primary area of research is root and fiber reinforcement of soils. Dr. Gray explained he was hired by the USACE as a technical consultant on a river bank stability problem in Ohio and was the principal investigator on a USACE funded research project in the 1990's to determine the influence of woody vegetation on the structural stability and integrity of levees. The findings and conclusions from this investigation were published in an official USACE publication and a peer review technical journal. He was at the meeting to speak in behalf of the homeowners in Lakewood South with yards that back into the levee and are concerned about the removal of trees.

Dr. Gray listed the reasons to save the trees located along the levee toe. The inboard toe of the levee is not located correctly and has been located in an arbitrary and capricious manner. The levee is overbuilt in this location. Levees in the New Orleans area with similar vegetation patterns have performed exceptionally well. Tree cutting will leave severed, dead roots in the ground despite best efforts to eliminate this problem. Trees have not caused levee failures. There have been no reports stating that trees caused failures or levee breaches in the New Orleans area. There is a mass of technical literature which shows that woody vegetation improves levee stability. Finally, there are better management alternatives to dealing with problematic trees on a levee than cutting the trees down.

Dr. Gray explained the location of the inboard or theoretical toe of the levee core is located too far from the crest. As a result, it appears that the homeowners' fences and tree lines are intruding into the levee toe when, in fact, they do not. A cross section given to various homeowners was shown. Basically, three things determine where the toe of the levee will fall; i.e., the height of the levee, the location of the crest and the selected inclination of the slope. The diagram showed a 1.3 inclination. He explained moving the crest of the levee approximately six feet back would make the levee toe avoid encroachments on the fence or tree line. He noted that there is approximately seven to eight feet of cover at the levee toe. A picture showed a dogleg in the floodwall, which has the effect of pushing the toe towards the homeowners' yards and displaces the position of the levee crest.

Dr. Gray reviewed various alternative slope inclination designations and explained most earthen slopes are stable at a 2.1 slope. The levee is overbuilt and is thicker and wider than the standard design. Former USACE guidance allowed woody vegetation plants in an overbuilt section where root penetration would not intrude or invade the theoretical core. Levees in the New Orleans area with similar vegetation patterns have performed well. Two investigations were performed following Katrina—one by the Interagency Performance Evaluation Task Force (IPET) and another by the Independent Levee Investigation Team (ILIT). A figure from the ILIT investigation showed a grass levee section in New Orleans that was overtopped during Hurricanes Katrina and Rita with woody vegetation growing along both the inboard and outboard toes which performed exceptionally well. He contrasted the appearance of this levee with the 17<sup>th</sup> Street Canal levee which has a grass surface with vegetation growing along the inboard toe and a hint of vegetation growing along the outboard toe. Based upon this information and findings, he expected the 17<sup>th</sup> Street Canal Levee to perform exceptionally well.

He stated tree cutting will leave severed, dead roots in the ground. These dead roots will eventually rot and decay, thus reverting zones of reinforcement to zones of weakness and potential seepage conduits. Stump grinding will still leave roots in the ground. The USACE maintains that it will do excavation to chase roots back to no greater than 1-inch in diameter; however, this would still leave roots in the ground that could potentially become seepage problems. In addition, pulling a tree out of the ground causes tremendous disturbance in the levee. The excavation or hole can be refilled with dirt and compacted; however, it is not the same as the surrounding area and could result in a hydrologic discontinuity with serious consequences.

Dr. Gray stated there was no evidence in either of the two investigations conducted following Katrina that trees caused a levee breach or failure. The investigations cited several levee failure or damage mechanisms; i.e., mass stability failures, surficial erosion problems and hydraulic forces. A host of subcategories fall under the general failure or damage mechanisms; however, none had anything to do with trees.

Dr. Gray explained if there is an under seepage problem with water emerging on the other side of the levee in an upward direction and a critical gradient develops, the soil would lose its bearing capacity and strength at the levee toe and a failure would occur. A picture of breach site was shown with a toppled tree. He explained that at this site

there was a critical condition in the soil with a loss of bearing capacity and shear strength, and it did not matter whether or not the tree was there.

Numerous scientific and engineering studies have shown that trees or woody vegetation have a beneficial affect on the stability and integrity of slopes. Protective attributes include root reinforcement, soil moisture depletion, soil buttressing and arching action and surcharge. A soils mechanics' text book published in the early 2000's entitled Slope Stability and Stabilization Methods, Chapter 9, cites the beneficial influences of vegetation on slope stability.

A slide demonstrated a number of hydraulic and mechanical mechanisms—both beneficial and adverse—that affect the stability of slopes. Management techniques, such as pruning, which decreases the sail affect, can be utilize to minimize problems in the case of a potentially adverse situation such as tree exposure to wind forces. Laboratory and field test findings on the effects of root reinforcement were reviewed.

Dr. Gray explained that trenching and mapping were used to determine the architecture and distribution of root systems of trees as part of the research study commissioned by the USACE in the early 1990's to examine the influence of woody vegetation on levee slope stability. Slope stability analyses showed that stability is improved as the amount of fiber concentration is increased in the soil. More recent work by the Agricultural Research Service has corroborated the earlier USACE work using more sophisticated models and taking into account strain incompatibility between root reinforcements and soil matrix. He pointed out that the rate and frequency of land sliding increases when trees are cut down on hill sides.

A mass stability hierarchy for levee slopes was reviewed. Levees with live tree roots that act as tensile reinforcements were the most stable; intermediate were levees with grass cover that offered good protection against superficial erosion, but were not as good as trees against mass slope failures; and least stable were levees with severed, dead roots, which eventually decay and become zones of weakness and potential seepage conduits.

Dr. Gray concluded his presentation by noting that there are better management alternatives to tree removal and cutting. A picture of the 17<sup>th</sup> Street Canal levee near the railroad bridge was shown. He stated this is a very sturdy, robust, safe levee in its present condition, and tree cutting and removal along the toe could serve no useful purpose.

Dr. Gray further explained selected trees could be looked at and pruning techniques considered to minimize sail effects. He advised most of the trees that he saw were in the overbuilt section where overturning would not be an issue. He stated he had not done an analysis on overturning effects; however, a paper was presented last August at a levee vegetation symposium by a professor who had performed this type calculation and analysis.

Mr. Jackson noted that the pictures presented by Dr. Gray were of the overbuilt levee section. References were made by Dr. Gray to tree roots strengthening levees, which

he did not particularly disagree with; however, he noted in south Louisiana the stress on levees are due to both high water levels and high winds occurring simultaneously. A felled tree during such an event pulling up a large plug of earth on the protected side of the levee is a serious situation and could counteract any strength the tree might have given levee soils during normal times. Also, trees, vegetation, fences and buildings are located almost up to the I-wall on private property on the north side of Veterans Boulevard along the 17<sup>th</sup> Street Canal, which may call for some consideration. He stressed the importance of being able to thoroughly inspect the levee, which is on very soft, unstable soils, at regular occurrences to look for stability issues. A simple evaluation on a general basis of the strength that root systems add to slopes is appropriate, but not necessarily the only decision factor with regard to levee stability. During storm events these levees can expect to see 12 to 16 feet of differential between the ground level on the protected side and the water surface elevation on the back side, which is a lot in these soft soils. He stated he appreciated the presentation; however, given more time he thought Dr. Gray might reconsider his position on this issue.

Dr. Gray commented there was adequate access for inspection.

Mr. Jackson reiterated this was not the case on the other side of Veterans Boulevard. He explained that this canal levee came to infamy after Hurricane Katrina. There was an overturned tree at the levee breach. He did not believe that the investigation on the cause and effect relationship between the felled tree and the breach, and whether the tree had anything to do with it, had ever been quite settled. There was enough evidence that the mechanism established by IPET on the cause of the breach was sufficient to where no further time needed to be spent on the incident of the tree. He emphasized the importance a clear, defined right-of-way with no obstructions, such as trees, fences and buildings.

Dr. Gray responded he spent a fair amount of time yesterday looking at levees and he did not see any where access for inspection was problematic. Neither the IPET nor ILIT reports categorically stated that trees caused the 17<sup>th</sup> Street Canal levee breach/failure. He stated he spoke to a member of the IPET team who said that the team decided it would not talk about trees because there were so many other failure/damage mechanisms upon which they needed to concentrate and that trees were a smaller issue and not part of the equation.

Mr. Jackson explained he served on the AFC external review group and was very familiar with what was done in the IPET investigation. He reiterated the evidence on the mechanism of failure was so evident that looking at a tree at that point in that particular location did not serve any real purpose. The evidence was too strong on the actual failure mechanism that was concluded by IPET and supported by the external review panel.

Dr. Gray pointed out he identified six or seven reasons for saving trees and that all these reasons should be taken into account before a decision is made on tree removal.

Mr. Barry commented he had several concerns, the first being the issue of pruning. Most of the trees observed by Dr. Gray were located on the overbuilt levee section,

where the actual toe of the levee is still a subject of some contention. He was sympathetic to the homeowners' position. He stated he was not certain that the USACE had presented enough evidence to convince him that they were right. However, on the other hand the risk is so great if the USACE is right, that the Board is compelled to err on the side of caution. He explained that it would one thing for the Board to substitute its judgment for the USACE's if it wanted to be more conservative; however, it is another thing to ask the Board to substitute its judgment and be more risky than the USACE. Pruning would require continued monitoring and would be a constant, on-going maintenance problem. It would require additional manpower for someone to routinely go down thousands of feet of levee, insist that trees be pruned and enforce pruning, which is not practical.

Dr. Gray responded he was in favor of erring on the side of prudence; however, he asked the Board to suppose that tree removal is taking it in the other direction and putting it in a more dangerous position.

Mr. Barry advised he read Dr. Gray's report prior to the presentation, which he found provocative, but not compelling. The USACE has said that it is addressing Dr. Gray's concerns.

Mr. Pineda asked Dr. Gray, as a civil engineer, if he inspected an earthen embankment holding back water, such as a dam, would he advocate for trees to remain on the dam because they increase soil shear strength and provide the other referred to benefits.

Dr. Gray replied, in the case of dams, he would favor brush and woody vegetation, and not trees, by virtue of the fact that a dam is a highly critical structure with a permanent water table holding back a permanent reservoir and has a steady hydrostatic surface. A levee is a slightly different situation involving different forces.

Mr. Pineda stated he recognized the situation is slightly different, but that nationally levees should be maintained to almost the same standards as dams. On an individual basis, brushes and trees can increase the shear strength of the surrounding soil; however, he questioned the long term integrity as a policy. Since these are federal levees, the USACE sets the national policy. He pointed out that there would not be much of an argument about whether to remove trees on a dam, and that perhaps the Board should not be having that argument relative to a levee that acts like a dam during a hurricane event.

Dr. Gray commented that the maintenance issue is a policy issue. He was just simply addressing the engineering aspects.

Mr. Goins pointed out that Dr. Gray's presentation assumed healthy trees. Trees have a life expectancy and as they age the same root systems that presently strengthen the soil may become a weakness.

Dr. Gray replied this issue has come up in sloped forest areas where timber is harvested. When all the trees are cut down at the same time, there are thousands of

dead roots. However, in the case of one dying tree, the surrounding vegetation has a chance to re-root.

Mr. Barry pointed out that one of the reasons for the system's design was that the USACE believed it would survive during the brief time it would be under stress from a hurricane; however, obviously that judgment was wrong.

Mr. Maraldo referred to page 14 of the minutes of the September 2007 meeting. He noted there was a discussion about legislation to address the compensation issue and the Board indicated it would consider putting legislation on its agenda; however, it did not do so. He stated he was providing Ms. Sutherland with a copy of H.B. 1219 and its amendments. He advised that the last amendment provides that this act clarifies, but does not change, the existing law, and that H.B. 1219 clarifies that R.S. 38:225 does not apply to outfall or drainage canals.

New Orleans Councilmember Shelly Midura stated her appearance today is as a messenger of the New Orleans City Council with a resolution in support of the house bill regarding compensation and as the district councilmember representing this area of New Orleans and a former resident of Bellaire Drive in Lakewood South. She stated she respected the members of the Board for their service, professionalism and expertise, and did not come to put political pressure, but as a voice of the people she represents. She urged the Board to use its best judgment and due diligence before making a decision. The Board is in a very difficult position, balancing the extraordinary caution necessary in managing flood control with the evidence for the proposed measures and whether or not these measures are necessary. She asked the Board to consider the information provided and not let the giant of the USACE determine how it is going to deal with this problem. She added, she had no judgment on whether any of what had been said today was right or wrong, but was asking the Board as the experts to consider the full picture and not be complacent and perhaps take the less difficult way out, which would be to vote yes without taking the time to do due diligence on the issues brought up today.

Councilmember Midura commented on Federal policies which are applied nationally without concern for individual situations and leave local municipalities little room to maneuver because of the power of the Federal dollar. She pointed out there is some validity to dissecting the overbuilt section from the thinner part of the levee. She said levees across the country are different and a national policy that does not take into consideration the specifics of individual areas do not do the people any good.

Councilmember Midura stated the citizens of New Orleans are asking the Board to protect the City's natural beauty and get the best protection possible. She said, if it is, in fact, removing the trees, then so be it. However, she asked that the Board use due diligence and professional expertise and not just cave into the pressure of a giant.

Mr. Maraldo commented the Coalition presented an alternative that it believes is the best protection possible and asked that a USACE representative address this alternative.

Mr. Doody pointed out that the Board has not taken this issue lightly. It has done a great amount of due diligence and has been engaged throughout the entire process, which started in about April, 2007, and has been going on for over a year.

Colonel Alvin Lee, USACE District Commander, advised this is a critical issue that both he and his predecessor, along with other individuals, have been working on. The USACE is confident in its belief that the actions being taken are to reduce risks for the upcoming hurricane season and that the removal of trees, vegetation and fences within the toe plus six-foot corridor will increase the performance and integrity of the system. Additionally, USACE representatives need access to see and verify the condition of levees and floodwalls in order to do accurate ICW (Inspection of Completed Works) reports and to provide that information to levee districts and authorities so that the appropriate actions can be taken.

Col. Lee explained the tree removal program is a national program. The USACE's usual procedure and the national policy is for 15-feet from the levee toe or within existing right-of-way. The State statute, however, provides for six-feet; therefore, within six-feet of the levee toe is viewed as right-of-way. The primary purpose of the tree removal program is to reduce risks to the public because of the existence of trees and woody vegetation on or near levees or floodwalls. This work has been a cooperative venture between the USACE, the levee authority and levee districts. The request to look at some of the risk areas and remove the risks out of the equation was initiated to local sponsors after Hurricane Katrina and is part of the emergency rehabilitation program for Lake Pontchartrain and Vicinity Project. The scope of the tree removal program is limited to rights-of-way or statutory rights-of-way to local sponsors. The USACE has closely coordinated with the engineering and legal staffs of the East Authority and DOTD to identify trees and fences that are believed impair the proper functioning of the levee system and determine what rights-of-way or statutory rights are available to remove these risks from the system.

Col. Lee further explained this effort taken place over a two year period and to-date thousands of trees have been removed from various reaches of the system. In each instance work has been performed under a right-of-entry granted by the constituent levee district under existing State law. What the USACE is asking for in this case is consistent with what has been done over the past two years. The right-of-entry request for the 17<sup>th</sup> Street Canal is essentially the same request that was granted by the O.L.D. in early 2007 for the removal of similar obstructions on the London Avenue Canal. The USACE believes that trees and fences are a risk to the levee system. Tree roots that have grown into a levee provide a pathway for seepage, especially when those trees are dead. Root balls of trees blown over during storms create critical voids in the levee that can worsen seepage and weaken stability. Large overturned trees can fall on and damage floodwalls.

Col. Lee commented on the recent Mississippi River high water event. One of the first things the USACE did in its flood fight was to limit individuals from making intrusions into the ground within 1,500 feet of the main line river levee. The reason for this was so that conduits would not be created for the hydrostatic pressure of the water to break through on the protected side of the levee and cause a potential breach or seepage

problem. This is a parallel of what the USACE is trying to do in the tree removal program in order to reduce risks and insure public safety. The USACE's guidance is clear regarding the risks of woody vegetation and the need for corrective actions to reduce those risks. The USACE has had tree studies performed by LSU to determine the extent of root systems, the depth of root balls of certain tree species and potential consequences during a hurricane-type event. The extensive research performed was validated by the USACE's national headquarters in the Tree Removal Program which was taken up after Hurricane Katrina. He pointed out that Hurricane Katrina was a game changer and made the USACE look at things differently. In addition to its researchers, external experts from IPET and academia, including LSU and other universities, were used to gather information and assist the USACE in coming to the decision that the trees needed to be removed in order to increase the performance of the system.

Brett Herr with the USACE presented a series of slides of one location which showed the ground elevation, the theoretical section, and how a tree located at approximately the theoretical toe plus six feet can impact the theoretical section. Surveys were done to identify the natural ground elevation. The theoretical section is the minimum section to provide protection for the safe water elevation in the canal with 1 on 3 side slopes and a ten foot crown. He explained the theoretical section was placed onto the existing ground line and was slid as far to the right towards the canal as possible without violating the existing ground line. USACE guidance requires a three-foot root free zone in overbuilt sections above the minimum section. A slide was shown with a hackberry tree placed at the six foot offset from the theoretical toe with roots drawn 18.9 feet from the trunk, which was based on empirical data from the tree root study. The tree roots clearly violate the root free zone. One large tree was located at this particular address.

Mr. Herr provided a handout with additional information that contained a number of quotes from experts in the field that identified trees and roots as a concern for levees. He cited the following quotes:

*"The presence of trees and shrubs on or inside a dike's stability zone affects the strength of the water retaining structure as follows. At sea and lake dikes the occurrence of extreme high water usually goes hand in hand with heavy wind loads. The most natural failure mechanism in connection with trees is uprooting (due to wind). This creates a large hole in the dike, which can lead to pit forming due to rapid erosion." Guide on Sea and Lake Dikes, December 1999, The Netherlands*

*"The following is a listing of critical errors and poor judgments and decisions that contributed to the poor performance of the drainage canal levees and floodwalls during Hurricane Katrina: The failure to garner access and control of property at the inboard (protected side) toe of the levees prevented full and proper inspection of this critical area. It also led to unacceptable risk associated with growth of trees on the inboard side levee slopes and toes, and the literal undermining of levee toes by excavation of in-ground swimming pools in this critical inboard toe area." Investigation of the Performance of the New Orleans Flood Protection Systems in Hurricane Katrina on August 29, 2005, Raymond B. Seed, U.C. Berkeley Led Independent Levee Investigation Team 31 July 2006*

*"There are legitimate concerns and issues associated with the presence of woody vegetation on dams and levees, particularly with regard to inspection and flood fighting. There are also risks associated with tree toppling and scour erosion around large trees imbedded in levee slopes." Technical Evaluation of Technical Manual for Dam Owners: Impact of Plants on Earthen Dams, FEMA 534/September 2005, Donald H. Gray Professor (Emeritus) of Civil and Environmental Engineering, The University of Michigan, July 2007*

Mr. Barry asked USACE representatives to address the alternatives that the Coalition stated were better in terms of flood protection, and the meetings that they were supposed to have held with the individual property owners.

Mr. Herr reviewed the sequence of recent events. The USACE had again looked to assure it had identified the minimum theoretical section it could use to minimize impact to the residents. After this was done, the USACE came to the April Board meeting, showed the new line and asked for the Board and DOTD to join the USACE in walking the entire levee to look at the impacts of the latest line for the minimum section. The USACE had also requested a right-of-entry to stake the line, since the theoretical levee toe needed to be marked in the field to see the impact. The follow up inspection and walk through with the levee district and DOTD were scheduled and within a couple of days the USACE had updated and finalized the inventory sheets. A letter was quickly prepared and sent out, which he admitted was rushed; however, they were trying to give the residents an opportunity to talk with the USACE before today's meeting. Realizing the letter was being sent with very short notice, the USACE also sent an e-mail notice to as many individuals as possible and requested those individuals to spread the word. The purpose of the meeting was to answer the residents' questions and to review the information that had previously been presented, in addition to the individual data sheets.

Col. Lee explained that some of the alternatives looked at included some things discussed today, such as placement of rock along the levees, when doing the emergency work on the outfall canals after Hurricane Katrina. The selected alternative was to use the interim control structures at the outfall canals. Rocking the levees would have presented numerous challenges, including the amount of time needed and extensive real estate issues. The cross section of rocks would have caused the same type of real estate issues that are being discussed today for the tree removal program. The interim control structures minimize a substantial amount of risk in the system; however, they do not fully remove the risk. There are safe water elevations on each of the canals that must be closely monitored. The USACE must work with the Sewerage and Water Board to match its flows with pumping capacity so as not to exceed the safe water elevation when the gated structures are closed.

Mr. Barry stated the comment was made by residents that the alternative was actually a safer alternative and asked for Col. Lee's response. He also asked for a clarification on the real estate issues had the rock alternative been selected.

Col. Lee replied that there would have been real estate issues with rocking the levees and floodwalls to provide that level of protection. Rocks would have been placed on the

protected side of the levee. In order to reduce risks, the decision was made to put the interim control structures in place in a rapid amount of time—less than a year—so that there would be redundant protection from a hurricane or storm. The amount of time that it would have taken to get the alternative protection in place would have far exceeded what was done by the USACE in putting in the interim control structures. The Hurricane Protection Office is working on the permanent pump solution and looking at the entire system to further increase safety and reduce risk in the entire area.

The USACE was asked about the section on the 17<sup>th</sup> Street Canal where rocks had been placed. Col. Lee explained, typically, the USACE has increased protection and armored transition points between floodwalls and earthen levees. Col. Starkel further explained that emergency work was performed in an area near Veterans Highway where the sand layer was much closer to the surface in order to increase stability.

Mr. Maraldo commented that yesterday Dr. Gray met with members of the USACE and neither he nor the Coalition were informed that it would be making another presentation nor given the information presented today in order to be able to prepare a response.

Mr. Doody advised USACE representatives were present today at the Board's request to answer its questions and the USACE was not limited in what it could bring.

Mr. Doody read a question to the USACE from the residents: "Is there an alternative program that will provide greater levee protection than the proposed program without the taking of private property?"

Col. Lee responded he tried to address this issue in talking about risks and risk reduction and that the USACE views this matter very seriously. The USACE went through a laborious process attempting to sort fact from fiction and in meetings with numerous people on right-of-way lines, easements, and other issues over the past eight months. The permanent pump solution is looking at that issue right now and is currently in alternatives analysis. However, the question before the Board is, can it afford to wait? He explained the process for the permanent solution. The NEPA process is being used to determine which alternative will be selected. It will then go through the public comment process and a contract will be awarded in the future to address these issues. The USACE believes there is a risk right now and wants to mitigate that risk by removing the limited number of trees that are actually within the current State statute of levee toe plus six feet. The USACE also believes that this needs to occur this hurricane season as expeditiously as possible.

Mr. Doody read a series of question to the USACE from residents: "If live tree roots cause potential seepage paths, what happens when many trees are cut all at once leaving thousands of dead, severed roots in the ground? Won't these dead roots be a more serious threat? How can you guarantee that all these dead, severed roots will be removed regardless of size?"

Col. Lee replied the USACE in its past tree removal programs has removed the root ball from the stump and removed all roots down to one-half inch in diameter. This is then backfilled with compacted clay in not-to-exceed six-inch lifts. It is compacted in place to

insure that the dangers and associated risks discussed earlier are mitigated and a well compacted levee remains.

Mr. Doody read another question to the USACE from residents: "What was the program/alternative that Frank Boykavich referenced during the Monday, May 12, 2008 meeting?"

Frank Boykavich responded that the alternative was to use 60-foot length sheet piling to cut off the sand layer.

Col. Starkel pointed out this alternative was looked at under the project information report for the interim structure and is being looked at under the permanent solution; however, it is not quick nor is it cheap.

Mr. Boykavich added, the sheet piling would be placed in the center of the levee. The I-walls would have to be pulled and deep sheet piling driven.

Mr. Doody read another question for the USACE from residents: "If this is such an important program, why doesn't the USACE expropriate the property it says it needs and pay fair market value?"

Col. Lee replied that the USACE believes the right-of-entry is essentially the same as previously requested and granted by the O.L.D. in early 2007 for the removal of similar obstructions on the London Avenue Canal. This was researched by the USACE's legal and real estate staffs, in coordination with the levee authority, levee district and DOTD, and the conclusion was reached based on the State statute.

Ms. Sutherland read a quote from a Times Picayune article and asked whether or not the 17<sup>th</sup> Street Canal is currently part of the hurricane protection system?

Col. Lee explained the article clearly talks about a line of protection. The first line of protection for surge from Lake Pontchartrain has been transferred from the floodwalls to the interim gated control structures. However, this does not remove the risks, since many parts of New Orleans are below sea level and internal drainage is a major issue before, during and after a hurricane event. Water must be pumped into those canals, moved through the canals and then pumped into Lake Pontchartrain. All three outfall canals have safe water elevations that require monitoring so that factors of safety are not exceeded. From the USACE's perspective, those levees/floodwalls are still authorized and are part of the federal hurricane protection system; however, they are redundant parts of the system.

Mr. Goins asked whether there was a proposed footprint for the long term solution. His opinion was that he would not advocate a long term solution that did not either repair or replace the floodwalls or drop the canal to an at-grade level.

Col. Lee replied the permanent pump report that was sent to Congress was an attempt to look at the internal drainage in the whole basin. The Hurricane Protection Office has a suite of alternatives that are currently going through the NEPA evaluation process.

After the public comment process, a preferred alternative will be selected to go forward and provide this protection. He pointed out that there is a span of time that the USACE is concerned about and that two or three hurricane seasons may pass before the permanent solution is in place. The USACE believes the residual risk remains in place until the trees are removed from the toe plus six foot corridor. He indicated the USACE has reached out to multiple peoples in the communities to try to determine how it could still provide the factors of safety and reduced risks while causing the least number of impacts in the communities and along the canals.

Mr. Barry asked Dr. Gray whether he had a problem with the way the toe of the levee in the overbuilt section was indicated on the USACE's slide.

Dr. Gray responded that he did have a problem with how the toe was located and that the crest could be moved six feet.

Mr. Pineda pointed out that the 17<sup>th</sup> Street Canal levee/floodwall would remain a part of the federal system unless and until de-authorized by Congress working through the Chief of Engineers' office in Washington. There is a very complicated administrative process in Washington in order to make a project no longer a federal project, and until that happens it remains a part of the authorized project and everything that this entails.

Mr. Maraldo commented that the USACE is taking six feet from the levee toe because if it took 15-feet from the levee toe it would have to expropriate the property and compensate property owners. The USACE has told property owners that the property would remain theirs and they would just be exercising 24 hours/day and 7 days/week right of use and right of entry; however, the residents will have to cut the grass and pay property taxes and mortgages on it. The property owners would not be able to fence or use the property and believe this to be a taking.

Mrs. Byram commented her property has 200 feet of trees and levee. She indicated she had information that counters information provided by the USACE, and that the toe is wrongly placed and this action is not necessary on this section of levee.

Mr. Herr pointed out the levee section that was used is the minimum section for the existing safe water elevation.

A motion was offered by Mr. Barry, seconded by Mr. Jackson and unanimously approved by the Board, to consider as the next item of business Agenda Item XIII.D.1 – "Request for Right of Entry by the USACE for tree and fence removal activities and related surveys along the 17<sup>th</sup> Street Canal (5310 Bellaire to 6772 Bellaire)."

Mr. McKee commented when the Board was seated it was inundated with the devastation from Hurricane Katrina and its responsibility to prevent to the greatest extent possible any further damage. A hurricane coming into this area is totally unbiased about where it attacks. The Board must protect Orleans, Jefferson and St. Bernard Parishes in total and there must be a total system of protection around these entities. He cautioned that the Board must consider the decision it is making today and be careful that it does not create a condition where it is making decisions on very minute

pieces of property as it proceeds with the development of a protection system. If the Board begins to say that one particular portion of the levee probably would withstand a hurricane, but farther down there is another portion that is terribly vulnerable to breaching, it is not being consistent in applying a standard of care that in the engineering profession it is compelled to apply. The Board must apply this standard of care to meet and fulfill its responsibilities across the board and cannot isolate it to single locations. He voiced his support of the motion, adding that this is one of the most difficult decisions he has had to make over a long period of time. He stated he spent a lot of time studying the information that was provided by the land owners and the USACE. He commented that he ran across a quote from Confucius -- "one of the things that you need to develop courage is caring". He suggested to the Board that if it really cared about the responsibilities of its job, and cared compassionately about the people it is here to protect, then it would have enough courage to support the motion.

Mr. Goins stated his opinion was that the Board should have the courage to tell the USACE that it had three years to come up with an alternative, which they have not done. This is the reason he did not support the motion. The USACE did a good job the first year after Hurricane Katrina, however, in the last two years it has not been enough. He stated this was just a patch, rather than a final solution.

Mr. Jackson stated he agreed with some of the things said by Mr. Goins. However, he supported the motion because he believes he has a responsibility to all the people in the City of New Orleans and Jefferson Parish, which he represents. He said he was not willing to take any risk that would expose the people of New Orleans to a potential breach of the canal levee during the sensitive operation of dual pump stations on the canal. He stated that he voiced his opinion to the USACE that the ultimate solution of the lakefront pumping stations must include the interior canals and interior pump stations.

Mr. Pineda explained he is a Civil Engineer with a Masters Degree working with the California State Department of Water Resources in Sacramento, which is responsible for 1,600 miles of Federal levees in the Central Valley and is dealing with these same issues. He advised he has worked 28 years as a civil engineer with 21 of those years working with flood issues and flood risk management. He discussed a number of points on which he is basing his vote. Flood control levees and other flood control structures need to be maintained to their highest standard as a nationwide policy. The levee section needs to be maintained free of encroachments, including fences, trees and brush, in order to allow the proper operations and maintenance and for access during a flood fight. The USACE levee vegetation policy is not new and has been in existence for some time; however, it has not been applied consistently throughout the nation. Post Katrina the USACE is strengthening its inspection program and taking a tough stand on the vegetation policy resulting in the issue the Board is dealing with today and that other levee maintaining agencies are dealing with throughout the country. Operations and maintenance of the 17<sup>th</sup> Street Canal levees are clearly the responsibility of the non-federal sponsor of the hurricane protection system, which is O.L.D. under the authority of SLFP AE. If the USACE does not remove the violating encroachments, then that responsibility will shift to the O.L.D. and SLFP AE. In addition, if the trees and vegetation on the levee are not removed, it would be appropriately noted

in the next USACE inspection report. Should the levee receive an unacceptable rating from USACE inspectors, the current policy being implemented in other parts of the country is that the levee reach or system will be expelled from the USACE's Public Law 84-99 emergency response and repair program. FEMA would then receive that report and more than likely de-credit the levee within the National Flood Insurance Program of providing 100-year protection and homeowners with federally backed loans or mortgages will be required to maintain flood insurance for the remaining balance on their mortgage or federal loan. In order to assure public safety and reduce risks, he recommended that the Board support the approval of the motion to grant right of entry. Given the need to deliver the 100-year project and eventually reach the 500 year level of protection, he did not believe the Board had any choice in this matter.

Mr. Wittie stated he was against granting the right-of-entry. He did not think the location of the levee toe was accurately defined. The trees are extremely close to the toe plus six feet and he did not think they were a detriment or a danger to the levee.

Mr. Barnes commented that some good points had been made; however, in the interest of moving forward and of not making an exception he would vote in favor of the motion.

Mr. Barry stated that the Board was asked to defer this request until after the Legislative session; however, it was said that the amendment of H.B. 1219 would not change but only clarify existing law. This would moot the issue of whether or not the Board should defer action. He commented the Board should have the same standards, but it also had the right to distinguish between different situations. However, in this case, the Board must protect the public. Dr. Gray said the crest could slide in one direction for one reason; however, the USACE has said it could not for another reason. Mr. Barry stated that if this was a less important issue, he would probably err on the side of the homeowners. However, this issue puts everyone at risk, and if a mistake is to be made, it must be made on the side of protecting the city. In addition to the real risk, there is a risk to the recovery process and a cascade of things could happen because of possible national exposure by refusing to allow the USACE to do what in its view is protecting the city. Therefore, he would vote in favor of the motion.

Mr. Doody stated he hoped that by hearing the comments of the Board members that the homeowners realize how carefully they have considered all the issues. He added, if the Board believes the USACE's experts, then trees may be lost; however, if it believes the homeowners' experts and they are wrong, we could lose a city. Therefore, he would vote in favor of the motion.

**RESOLUTION #05-15-08-03 – 17<sup>th</sup> STREET CANAL RIGHT-OF-ENTRY FOR TREE AND FENCE REMOVAL ACTIVITIES AND RELATED SURVEYS**

On the motion of Mr. Pineda,

Seconded by Mr. Jackson, the following resolution was offered:

**WHEREAS**, by letter dated April 4, 2008, the U.S. Army Corps of Engineers requested a right-of-entry to perform tree and fence removal activities and related surveys along the 17<sup>th</sup> Street Canal Levee and Floodwall, East Side, Lake

Pontchartrain, Louisiana and Vicinity Hurricane Protection Project, Orleans Parish, Louisiana; and

**WHEREAS**, the limits of the work will extend from 5310 Bellaire Drive to 6772 Bellaire Drive between the floodwall and the toe plus six (6) feet line, theoretical toe plus six (6) line, and/or established right-of-way, as shown on maps entitled "Right-of-Entry plan for Lake Pontchartrain, Louisiana and Vicinity Hurricane Protection Project, Emergency Restoration, 17<sup>th</sup> St. Outfall Canal, Orleans Parish, Louisiana, Tree and Fence Removal Plan drawings, 1 through 4, dated April 7, 2008", and as further described in the USACE letter dated April 4, 2008.

**BE IT HEREBY RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East grants the U.S. Army Corps of Engineers (USACE) authorization for entry to perform tree and fence removal activities and related surveys along the 17<sup>th</sup> Street Canal Levee and Floodwall, East Side, Lake Pontchartrain, Louisiana and Vicinity Hurricane Protection Project, Orleans Parish, Louisiana, in accordance with the USACE letter dated April 4, 2008 and aforementioned maps, and authorizes the President or Orleans Levee District Executive Director Stevan Spencer to sign any and all documents necessary to accomplish the above.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Doody, Mr. Jackson, Mr. McKee and Mr. Pineda

NAYS: Mr. Goins and Mr. Wittie

ABSENT: Mr. Losonsky

Mr. Maraldo thanked the Board for its time and consideration of the information presented. He asked the Board's assistance in working with the USACE with working out the details of this program and securing the residents' back yards. He also asked that the individual on-site meetings be held as promised.

Mr. Doody asked Col. Starkel to work with the Authority through Robert Turner, Regional Director, to make sure the residents' concerns are addressed as they arise.

### **COMMITTEE REPORTS:**

Finance Committee: The Committee report was deferred. Items reviewed by the Finance Committee were reported on as they came up on the Agenda for consideration.

Operations Committee: Mr. Wittie reported the Committee met on May 7<sup>th</sup>. The Committee discussed a policy for take home vehicles. A conclusion was not reached and Mr. Turner was requested to meet with levee district Executive Directors and present a recommendation at the next Committee meeting. The Committee also discussed the advertisement and bid of a lowboy trailer and made the recommendation that the LBBLD be allowed to award the contract to the lowest responsive bidder. Revised emergency operations manuals and monthly status reports by the levee districts were reviewed. He noted that Jerry Colletti, USACE Assistant Chief of Operations, commended the levee districts' staffs and employees for their hard work during the recent Mississippi River flood fight.

Legal Committee: The Committee did not meet in May.

Special Issues Committee: The Committee did not meet in May.

**REGIONAL DIRECTOR'S REPORT: (copy appended)**

Robert Turner, Regional Director, advised the project design team meetings have commenced and will be on-going for the IHNC Surge Protection Project, and the subject of a course of action for right-of-way acquisitions is anticipated to come up at the next CPRA meeting. He noted that the Bonnet Carre Spillway has been closed. Flood fight conference calls are currently being held on Mondays, Wednesdays and Fridays during this critical period of the falling river level.

Mr. Barry reported that H.B. 712, which was a potential threat to the O.L.D., was recommitted to the House Appropriations Committee where it was anticipated to remain. He advised that he and Garrett Graves made a presentation to members of the Appropriations Committee in Washington and several other Congressmen relative to local cost share issues. A key message that Mr. Barry tried to convey was that the national interest not only requires the protection of this area, but that things that have benefited the rest of the country have made this area more vulnerable. This message is especially needed to prepare the country in advance of the numbers that will eventually come out on the 500-year level of protection.

Mr. Doody noted that H.B. 1219 not only affects this Authority, but every other levee district in the State, and as proposed would require all levee district to pay land owners for unrecorded rights-of-way. Should this bill pass as proposed, the potential cost for payment of rights-of-way that are not found to be recorded could impact the ability of the levee districts to provide flood protection.

**RESOLUTION #05-15-08-04 – AMENDING REFUNDING BOND RESOLUTIONS**

Mr. Doody explained the Authority was required by law to refinance the outstanding bond indebtedness of the Orleans Levee District (O.L.D.). At the time this legislation was adopted, it was hoped the reconstituted O.L.D. could carry 100 percent of the bond debt burden and relieve Algiers from having to pay a percentage. Although there was insufficient tax revenues to support this refinancing, the Board adopted the resolutions required to seek refinancing of the debt. The Bond Commission pointed out by letter some deficiencies in the Authority's request, which would be cleared up by the adoption of the resolution before the Board. He further advised he attended the Bond Commission hearing held earlier today. When this item was presented at the hearing, the staff advised that it did not recommend this refinancing. The Bond Commission adopted a motion to defer the issue and the Authority was told it would not be placed again on the Bond Commission agenda. Since the Bond Commission deferred the issue, the Authority cannot possibly meet the July 1, 2008 deadline. The Board has met its obligation under the statute to attempt to refinance the bonds by July 1, 2008.

On the motion of Mr. Barry,  
Seconded by Mr. Goins, the following resolution was offered:

A resolution amending Sections 301 of both of the Refunding Bond Resolutions adopted on April 17, 2008 given resolution numbers 04-17-08-03 and 04-17-08-04 so as to expressly provide that the bonds referred to in each such resolution may be issued as either fixed rate bonds bearing fixed rates not to exceed 9% per annum or variable rate bonds bearing a maximum variable rate not to exceed 14% per annum and other matters in connection therewith.

**Whereas**, the Southeast Louisiana Flood Protection Authority - East (the "Authority") acting as the governing authority of the Orleans Levee District adopted on April 17, 2008 refunding bond resolutions bearing resolution numbers 04-17-08-03 (the "Levee Improvement Refunding Bond Resolution") authorizing the not exceeding \$35,000,000 Orleans Levee District Levee Improvement Refunding Bonds, Series 2008 (the "Levee Refunding Bonds") and 04-17-08-04 (the "Public Improvement Refunding Bond Resolution" and collectively together the "Refunding Bond Resolutions") authorizing the not exceeding \$22,100,000 Orleans Levee District Public Improvement Refunding Bonds, Series 2008 (the "Public Refunding Bonds");

**Whereas**, the Authority desires to amend each of the Refunding Bond Resolutions so as to provide that both the Levee Refunding Bonds and the Public Refunding Bonds may be issued as either fixed rate bonds bearing fixed rates not to exceed 9% per annum or variable rate bonds bearing a maximum variable rate not to exceed 14% per annum.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of Southeast Louisiana Flood Protection Authority - East as the governing authority of the Orleans Levee District that:

Section 1. Supplements and Amendments to the Refunding Bond Resolutions. Section 301 of both of the Refunding Bond Resolutions are hereby supplemented and amended so that each thereof shall read as follows:

**SECTION 301. Denominations, Dates, Maturities and Interest**. The Bonds may be issued as either fixed rate or variable rate bonds, as either tax-exempt or taxable bonds, shall be dated their date of delivery, may be in fully registered form, may be in the denomination of Five Thousand Dollars (\$5,000) or any integral multiple thereof within a single maturity, shall be numbered consecutively from R-1 upward, shall bear interest from the date thereof or from the most recent Interest Payment Date to which interest has been paid or provided for (i) if issued as fixed rate bonds at rates not to exceed 9% per annum and (ii) if issued as variable rate bonds to bear variable rates not to exceed a maximum rate of 14% per annum. The Bonds may mature commencing on November 1, 2008 with no maturity later than November 1, 2015, all as shall be provided in the Supplemental Resolution.

Section 2. Amendment of the Refunding Bond Resolutions. This resolution shall constitute an amendment to both of the Refunding Bond Resolutions.

Section 3. Repealer. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of any such conflict.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barnes, Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda  
and Mr. Wittie

NAYS: None

ABSENT: Mr. Losonsky

**RESOLUTION #05-15-08-05 –  
REQUEST TO CPRA FOR PRIORITIZING STATE SURPLUS DOLLARS**

Mr. Doody reminded the Board that Governor Jindal committed \$300 million to coastal restoration and flood protection projects. The resolution that is before the Board urges the Coastal Protection and Restoration Authority (CPRA) to recognize flood protection as the most important priority when it takes up the issue of allocating this \$300 million. The ability is needed to go to the State and have monies available for USACE projects as they come up and local dollars are required so that work will not be delayed.

Mr. Barry commented the first priority for the State and the Authority should be to assure that the local match for 100-year protection is met. Board members concurred that the request would address the “local cost share” for 100-year hurricane protection.

On the motion of Mr. Wittie

Seconded by Mr. Barry, the following resolution was offered:

**WHEREAS**, in December 2005, due to the devastation of hurricanes Katrina and Rita, the Louisiana Legislature restructured the State's Wetland Conservation and Restoration Authority to form the Coastal Protection and Restoration Authority (CPRA) with the mandate of developing, implementing and enforcing a comprehensive coastal protection and restoration master plan; and

**WHEREAS**, in further response to the flooding and devastation experienced in Southeast Louisiana from Hurricanes Katrina and Rita, pursuant to Act 43 of the First Extraordinary Session of 2006, an election was held on September 30, 2006, wherein the voters of the State of Louisiana overwhelmingly approved a Constitutional Amendment to allow the creation of regional flood protection authorities for Southeast Louisiana; and

**WHEREAS**, Act 1 of said session established the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) with the mandate of perfecting, managing and maintaining a comprehensive flood protection system for the protection of the territories under its jurisdiction; and

**WHEREAS**, in the Second Extraordinary Session of 2008, the Louisiana Legislature, at the request of Governor Bobby Jindal, dedicated \$300 million to coastal restoration and hurricane protection from the 2006-07 fiscal year budget surplus of \$1.08 billion; and

**WHEREAS**, it is the intention of the CPRA to develop a list of projects to meet the urgent needs for restoration and protection considering public comment at its March 19, 2008, meeting, and for the CPRA Implementation Team to present the priority list for the surplus funds at the its meeting on May 21, 2008; and

**WHEREAS**, the accomplishment of a comprehensive coastal protection system is part of the long term solution for the protection of Southeast Louisiana and a real threat exists to the citizens of this region and both public and private property while awaiting the long term solution; and

**WHEREAS**, there is an urgent need to implement interim, short term measures immediately though the construction and improvement of the

hurricane and flood protection system to reduce the present risk to life, property and the rebuilding of Southeast Louisiana.

**BE IT HEREBY RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East strongly urges and requests the Coastal Protection and Restoration Authority to prioritize State surplus dollars to address the local cost share for the 100 year hurricane protection system in order to reduce the current risks as quickly as possible.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

**RESOLUTION #05-15-08-06 –  
APPROVAL TO ADVERTISE PUBLIC HEARINGS FOR LBBLD AND EJLD**

Mr. Doody advised that public hearings in St. Bernard Parish for the Lake Borgne Basin Levee District (LBBLD) and Jefferson Parish for the East Jefferson Levee District (EJLD) would be needed and must be advertised for this reassessment year. Tentative dates have been discussed; i.e., August 27, 2008 at 7:00 p.m. for the LBBLD and a hearing in the same week for the EJLD. Information will be received from the assessors and the Board can consider whether to roll up millage rates at a future Board meeting.

On the motion of Mr. Wittie,

Seconded by Mr. Goins, the following resolution was offered:

**BE IT HEREBY RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East authorizes the advertising of public hearings for the Lake Borgne Basin Levee District and East Jefferson Levee District as required in order to consider levying additional or increased millage rates without further voter approval or adopting the adjusted millage rate and rolling forward to a millage rate not to exceed the prior year's maximum in accordance with Art. 7, Sec. 23(C) of the LA Constitution and R.S. 47:1705.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

**RESOLUTION #05-15-08-07 - ACTUARIAL CONSULTING SERVICES**

Mr. Doody informed the Board these services are needed to perform actuarial calculations to determine the costs of benefits that are unrecorded on the O.L.D. and EJLD financial statements. The Board concurred that the Regional Director would negotiate a contract and fee and bring the contract back to the Board.

On the motion of Mr. Barry,

Seconded by Mr. Goins, the following resolution was offered:

**WHEREAS**, a Request for Proposals for Actuarial Consulting Services to implement Government Accounting Standards Board (GASB) Statement Number 45 requirements was advertised in the Times Picayune on March 5, 10 and 17, 2008, with a deadline for receipt of proposals of March 28, 2008; and

**WHEREAS**, these consulting services will provide the necessary benefit calculations to implement the GASB requirements for the Orleans Levee District (O.L.D.) and East Jefferson Levee District; and

**WHEREAS**, proposals and qualifications were reviewed by the Chairman of the Finance Committee and the O.L.D. Comptroller and their recommendation was presented to the Finance Committee at its meeting held on May 1<sup>st</sup> at which time the Committee concurred with the recommendation.

**BE IT RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) approves the selection of Rebowe and Fontenot, LLC to perform the above mentioned Actuarial Consulting Services.

**BE IT FURTHER RESOLVED**, that the SLFPA-E Regional Director is hereby authorized to negotiate a final fee and contract for said services for approval by the Board and for execution by the President.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

#### **RESOLUTION #05-15-08-08 - ORGANIZATIONAL STUDY AND STRATEGIC PLAN**

Mr. Pineda explained the Board approved the advertisement of a Request for Proposals (RFP) and five responses were received: GCR & Associates (Metairie, La), Henry Consulting (New Orleans, La), Evergeen Solutions (Tallahassee, Florida), SSA Consultants (Baton Rouge, La) and RNR Consulting (Cleveland, Ohio). Volunteers were requested and Mr. Pineda led a selection team consisting of Stradford Goins (SLPPAE), Gerry Gillen (O.L.D.), Fran Campbell (EJLD) and Jason McCrossen (LBBLD). The submittals were reviewed and none were rejected. Standardized questions were developed. The five responding firms or teams were interviewed on April 30<sup>th</sup> with each being allocated the same amount of time and asked the same questions. Each selection team member had a scoring sheet and took notes. A scoring sheet was developed with scores linked to the pre-determined questions and submitted proposals. Scores were tallied and the result of the accumulative score sheets was that the firm of SSA Consultants had three votes as the number one ranked firm and GCR & Associates had two votes as the number one ranked firm. A conference call was conducted earlier this week and the pros and cons of each firm or team were discussed. None of the five members of the selection team wanted to change his/her scores or ranking. Mr. Pineda reported that based on this open and analytical process, the majority of the selection team (three to two) recommended SSA Consultants as the firm to be entered into the resolution for award of the contract. A contract and fee would be negotiated by the Regional Director.

Mr. Goins indicated he had strong reservations regarding the highest ranked firm; i.e., the number of individuals that would perform this task compared to its magnitude, and that the highest ranked firm did not have the experience the second highest ranked firm had in working with levee districts. He noted, however, the impression of the selection team members was that the highest ranked firm was stronger on the strategic plan portion due to its experience in working with the CPRA.

Mr. Pineda recommended that this endeavor be a phased activity and that a two year contract be developed with a cap of \$250,000. The current budget for the first set of activities is \$50,000.

Mr. Jackson noted that the process should be that the Board approve the expenditure of \$50,000 and that the Regional Director negotiate a contract and bring it back to the Board for approval and execution by the President.

On the motion of Mr. Barry,  
Seconded by Mr. Wittie, the following resolution was offered:

**WHEREAS**, by Resolution No. 02-21-08-04 the Board authorized the advertisement of a Request for Proposals for professional consulting services for the performance of an organizational study of the Authority and the levee districts under its jurisdiction and for the development of a strategic plan for the Authority; and

**WHEREAS**, a Request for Proposals (RFP) for Consulting Services for an Organizational Study and Strategic Plan was advertised in the Times Picayune on March 5, 10 and 17, 2008, with a deadline for receipt of proposals of March 31, 2008; and

**WHEREAS**, proposals and qualifications were reviewed and interviews conducted by a selection team chosen by the President; and

**WHEREAS**, the selection team has recommended SSA Consultants as best qualified consultant to perform the organizational study and develop a strategic plan for the SLFPAE.

**BE IT RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) approves the selection of SSA Consultants to provide the Consulting Services for the aforementioned Organizational Study and Strategic Plan consistent with the RFP.

**BE IT FURTHER RESOLVED**, that the SLFPA-E Regional Director is hereby authorized to negotiate a final fee and contract for said services for approval by the Board and for execution by the President.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: Mr. Goins

ABSENT: Mr. Barnes and Mr. Losonsky

**RESOLUTION #05-15-08-09 –  
RFQ FOR PROFESSIONAL SERVICES RELATIVE TO LERDS**

Mr. Doody noted the issue of lands, easements, rights-of-way, relocations and disposal sites (LERDS) was identified early as a potential problem that could slow down the 100-year protection process.

Mr. Pineda added, LERDS is the responsibility of the non-federal sponsor and makes up a large portion of the local cost share estimate of \$1.7 billion for 100-year protection. A team consisting of representatives of SLFPA-E, the levee districts, CPRA and DOTD will be addressing LERDS; however, it is important for SLFAP-E to issue a request for qualifications to identify the best qualified firm or firms to assure working capacity when needed to move 100-year protection forward on a timely basis. He advised that Ms. Sutherland had indicated she did not favor the advertisement of an RFQ until a scope was developed which could be made a part of the advertisement. He noted that the proposed services are analytical and not legal in nature. The Board concurred with approval of the advertisement of the RFQ after the scope has been developed.

On the motion of Mr. Wittie,  
Seconded by Mr. Goins, the following resolution was offered:

**WHEREAS**, the Southeast Louisiana Flood Protection Authority-East (SLFPAE) and the levee districts under its jurisdiction are in need of professional services relative to lands, easements, rights-of-way, relocations and disposal sites (LERDS) in connection with 100 year protection projects; and

**BE IT RESOLVED**, that the Southeast Louisiana Flood Protection-East authorizes the advertisement of a Request for Qualifications for the aforementioned services after the scope has been developed.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

**RESOLUTION #05-15-08-10 –  
APPROVAL OF EMERGENCY OPERATIONS MANUALS**

Mr. Wittie advised that the revisions to the Emergency Operations Manuals were discussed by the Operations Committee and were recommended for approval.

On the motion of Mr. Wittie,  
Seconded by Mr. Barry, the following resolution was offered:

**WHEREAS**, Louisiana Revised Statutes, Title 38, Section 319, mandates that each Board of Commissioners of each Levee District prepare and regularly review its emergency procedures manual; and

**WHEREAS**, Orleans Levee District (O.L.D.), Lake Borgne Basin Levee District (LBBLD) and East Jefferson Levee District (EJLD) staff have each reviewed and updated its respective Emergency Operations Manual.

**BE IT RESOLVED**, That the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) approves the revised O.L.D., LBBLD and EJLD Emergency Operations Manuals, and authorizes all actions under the EOP and the Statute.

**FURTHER RESOLVED**, That the President, SLFPA-E Regional Director or Executive Director of the O.L.D., LBBLD and EJLD for their respective levee district, be authorized to sign any and all documents necessary to carry out the above.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

### **RESOLUTION #05-15-08-11- STORM PROOF PUMP STATIONS IN ST. BERNARD AND PLAQUEMINES PARISHES**

Mr. Doody explained a meeting was held in St. Bernard Parish shortly after the Board was seated and the USACE was asked the reason the St. Bernard Parish pump stations were not included under the 4<sup>th</sup> Supplemental Appropriations Act. Their response was that St. Bernard was not interpreted as being included in the wording "New Orleans and the surrounding areas." The only way to rectify this situation is through a request for an additional appropriation. Plaquemines Parish is included in this request since the region is tied together economically, emotionally and environmentally.

Col. Murray Starkel advised repairs were done to non-federal pump stations, including those in St. Bernard and Plaquemines Parishes, under the 3<sup>rd</sup> Supplemental Appropriations Act. Storm proofing will be performed under the 4<sup>th</sup> Supplemental Appropriations Act and is considered a part of 100-year protection.

On the motion of Mr. Barry,

Seconded by Mr. Goins, the following resolution was offered:

"A Resolution to request and urge the Congress of the United States to appropriate funding to storm proof pump stations in St. Bernard and Plaquemines Parishes."

**WHEREAS**, the 4<sup>th</sup> Supplemental Appropriations Act (PL109-234) following Hurricane Katrina appropriated funding for "projects in Southeast Louisiana to provide hurricane and storm damage reduction and flood damage reduction in the Greater New Orleans and surrounding areas", and specifically included an appropriation to be "used for storm-proofing interior pump stations to insure the operability of the stations during hurricanes, storms and high water events"; and

**WHEREAS**, the U.S. Army Corps of Engineers (USACE) interpreted the "greater New Orleans and the surrounding area" as Orleans and Jefferson Parishes only and not St. Bernard and Plaquemines Parishes; furthermore, the \$250 million included in the 4<sup>th</sup> Supplemental Appropriations Act for storm-proofing interior pump stations would be insufficient to fund the storm proofing of the interior pump stations in St. Bernard and Plaquemines Parishes; and

**WHEREAS**, the USACE Hurricane Protection Office has indicated that an appropriation of \$280 million is required to storm-proof the interior drainage pump stations in St. Bernard and Plaquemines Parishes; and

**WHEREAS**, without this additional appropriation by Congress St. Bernard and Plaquemines Parishes will remain exposed to the potential of flooding and the devastating consequences to both public and private properties should the drainage pump stations fail or their capabilities become compromised during a hurricane or storm event; and

**WHEREAS**, Orleans and Jefferson Parishes will face risk from flooding from St. Bernard and Plaquemines Parishes.

**BE IT RESOLVED**, that the Southeast Louisiana Flood Protection Authority-East urges and requests the Congress of the United States to appropriate funding in the amount of \$280 million for storm proofing of the interior drainage pump stations in St. Bernard and Plaquemines Parishes.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

#### **RESOLUTION #05-15-08-12 – SLFPA-E APPROPRIATION REQUEST**

Wilma Heaton advised House Bill 1 is currently being debated and after approval by the House will proceed to the Louisiana Senate. Senator Murray has offered to attempt to obtain additional funding for the Authority; however, a resolution is needed. The Board was reminded about the need for additional staffing for operations and for coordination with the USACE. The USACE currently has over 200 positions in its Hurricane Protection Office alone.

On the motion of Mr. Barry,

Seconded by Mr. Goins, the following resolution was offered:

**WHEREAS**, in response to the flooding and devastation experienced in Southeast Louisiana from Hurricanes Katrina and Rita, pursuant to Act 43 of the First Extraordinary Session of 2006, an election was held on September 30, 2006, wherein the voters of the State of Louisiana overwhelmingly approved a Constitutional Amendment to allow the creation of regional flood protection authorities for Southeast Louisiana; and

**WHEREAS**, Act 1 of said session established the Southeast Louisiana Flood Protection Authority-East (SLFPA-E or Authority) with the mandate of perfecting, managing and maintaining a comprehensive flood protection system for the protection of the territories under its jurisdiction; and

**WHEREAS**, currently the only funding source for the Authority is that provided by Act 43, to wit: "...the legislature may appropriate up to five hundred thousand dollars annually to regional flood protection authorities from the Coastal Protection and Restoration Fund."

**WHEREAS**, the United States Congress has recently approved and appropriated funding for the 100 year level of protection as part of the Lake

Pontchartrain and Vicinity Hurricane Protection Project, and adequate minimum staffing and services will be required to coordinate and review the over 150 flood protection projects that will comprise this level of protection; and

**WHEREAS**, to assure the safety of the public and protection of property, the Authority must also expend efforts to obtain Congressional approval and funding for greater than the 100 year level of protection; and

**WHEREAS**, the current annual funding of five hundred thousand dollars is insufficient to fund the administration and operations of the Authority, along with the services required in order for the Authority to meet its mandate of perfecting, managing and maintaining a comprehensive flood protection system; and

**BE IT HEREBY RESOLVED**, that SLFPA-E urges and requests the Louisiana Legislature to fund the SLFPA-E an additional appropriation of \$500,000.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Barry, Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes and Mr. Losonsky

**RESOLUTION #05-15-08-13 – EAST JEFFERSON LEVEE DISTRICT - SEVENTH WAIVER OF PRESCRIPTION -- GABRIEL**

Fran Campbell, EJLD Executive Director, indicated this is an on-going land dispute and approval of this action would maintain the status quo.

On the motion of Mr. Wittie,

Seconded by Mr. Goins, the following resolution was offered:

“A resolution to enter into a 7th Waiver of Prescription with Gabriel.”

**WHEREAS**, claims of ownership have been asserted by the Succession of Marie G. Krantz, (“Krantz”) and the East Jefferson Levee District to certain portions of the shoreline of Lake Pontchartrain and lands between the shoreline of Lake Pontchartrain and the Lake Pontchartrain protection levee adjacent to the Gabriel development situated in the City of Kenner, Jefferson Parish, Louisiana (the “Disputed Property”); and

**WHEREAS**, Krantz and the EJLD have cooperated by allowing construction on the Disputed Property without asserting opposition, each party preserving its respective rights; and

**WHEREAS**, The parties previously have entered into a Waiver of Prescription (the “First Waiver”), which was effective as of June 18, 2002, as well as Second, Third, Fourth, and Fifth and Sixth Waivers of Prescription (collectively the “Waivers”) and are willing to enter into a Seventh Waiver of Prescription, extending the Waivers for an additional year in order to preserve the respective rights of the Board and Krantz, each party preserving its right to assert positions as they existed or may have existed if suit had been filed as of the date of the First Waiver.

**BE IT RESOLVED**, the Southeast Louisiana Flood Protection Authority – East authorizes its President to enter into the aforementioned Seventh Waiver of Prescription.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes, Mr. Barry and Mr. Losonsky

**RESOLUTION #05-15-08-14 - LBBLD PURCHASE OF NON-GROUND BEARING DETACHABLE NECK LOWBOY TRAILER**

Mr. Wittie reported this item was discussed and recommended by the Operations Committee. Mr. Turner added, bids are being requested through a competitive bid process and are due on May 28<sup>th</sup>. The estimated cost of this equipment is \$50,000.

The Board concurred a recommendation would be brought back to the Board. It was pointed out that should the equipment not be received by June 30<sup>th</sup>, a revision of the fiscal year budget would be required.

On the motion of Mr. Wittie

Seconded by Mr. Jackson, the following resolution was offered:

**WHEREAS**, a real necessity exists for the Lake Borgne Basin Levee District (LBBLD) to purchase a Non-Ground Bearing Detachable Neck Lowboy Trailer and has publicly advertised for sealed bids pursuant to law with a deadline of May 28, 2008 for the acceptance of bids; and

**WHEREAS**, funding for the aforementioned equipment has been budgeted in the LBBLD Budget.

**BE IT HEREBY RESOLVED**, that the LBBLD Executive Director is hereby authorized to accept bids and to conduct the opening of said bids on May 28, 2008, for a Non-Ground Bearing Detachable Neck Lowboy Trailer, and to evaluate said bids and recommend to the Board the lowest responsive and responsible bidder pursuant to Louisiana law.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes, Mr. Barry and Mr. Losonsky

**RESOLUTION #05-15-08-15 – LBBLD REPLACEMENT OF AGGREGATE**

Jason McCrossen, LBBLD Executive Director, advised this project is for approximately 14,000 tons of limestone aggregate. There is a FEMA PW (project worksheet) to replace the stockpile used after Hurricane Katrina that was located at the port. Alternate A1 is for placement of the aggregate on the levee in lieu of stockpiling at the original location. Mr. Turner added, bids were received and a bid tabulation was available for review. The total cost of the project, including Alternate A1, is

approximately \$450,000. FEMA will pay all but about \$80,000 of this cost. The Board concurred that the President would sign the contract.

On the motion of Mr. Wittie,  
Seconded by Mr. Goins, the following resolution was offered:

**WHEREAS**, the Lake Borgne Basin Levee District advertised for and received bids for State Project No. 750-44-0002, Lake Borgne Basin Levee Improvements, St. Bernard Parish; and

**WHEREAS**, the work to be done per the Base Bid is to furnish, deliver, and stockpile aggregate surface course at St. Bernard Port for use on the Mississippi River Levee; and

**WHEREAS**, the work to be done per the Additive Alternate A1 is to apply aggregate surface course to the crown of the levee; and

**WHEREAS**, the limits of the work are from Mississippi River Levee Station 269+61.40 at Murphy Oil to St. Bernard/Plaquemines Parish Line at Levee Station 603+14.13; and

**WHEREAS**, FEMA PW #6171 for Lake Borgne Basin Levee District was obligated to cover the replacement of the aggregate, approximately 14,193 tons; and

**WHEREAS**, Lake Borgne Basin Levee District will have to pay for Additive Alternate A1.

**BE IT RESOLVED**, that the Executive Director of the Lake Borgne Basin Levee District is hereby authorized to award the contract to the lowest responsive and responsible bidder pursuant to Louisiana law.

**BE IT FURTHER RESOLVED**, that the President is hereby authorized to execute the aforementioned contract and to sign any and all documents necessary to carry out the above.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes, Mr. Barry and Mr. Losonsky

**RESOLUTION #05-15-08-16 –  
REPLACEMENT OF O.L.D. FINANCIAL MANAGEMENT SOFTWARE**

Jim Bollinger, O.L.D. Comptroller, advised funding is budgeted for this acquisition. The annual maintenance cost of the current outdated software is \$120,000. The type of software described in the Request for Proposal (RFP) is anticipated to cost \$50,000 to \$70,000, and an annual maintenance fee of approximately 20% or \$10,000 to \$15,000 is anticipated. The desired product is a mid-range financial management system, sophisticated enough to accommodate all the levee districts at some point in time, with capabilities for billing across districts, tracking and extensive internal controls.

On the motion of Mr. Jackson,  
Seconded by Mr. Goins, the following resolution was offered:

**WHEREAS**, the Orleans Levee District's (O.L.D.) current Financial Management Software is outdated, costly to maintain and in need of replacement; and

**WHEREAS**, it is the intent of the Board that the purchase and installation of financial software and similar activities be included under its Qualification Based Selection Process For Professional Services Policy.

**BE IT RESOLVED**, that the Southeast Louisiana Flood Protection-East authorizes the advertisement of a Request for Proposals (RFP) for the replacement of the O.L.D. Financial Management Software.

The foregoing was submitted to a vote, the vote thereon was as follows:

YEAS: Mr. Goins, Mr. Jackson, Mr. McKee, Mr. Pineda and Mr. Wittie

NAYS: None

ABSENT: Mr. Barnes, Mr. Barry and Mr. Losonsky

Mr. Doody reported that there has been a great deal of discussion regarding the audit of the Authority, EJLD and O.L.D. The O.L.D.'s audit was to include the Algiers Levee District; however, it was later agreed that enough information is auditable for the Algiers Levee District for it to stand alone. The Legislative Auditor then suggested that the Authority, EJLD and O.L.D. be audited together. A single audit report would be issued with two opinions; i.e., one opinion for all of the entities and another opinion for the O.L.D. to satisfy the bondholders. In the future there would be a single audit for the Authority and all of the levee districts, and potentially a single opinion when bond concerns are no longer valid. This will be the subject of discussion at the proposers meeting to be held on May 22, 2008.

The next regular monthly Board meeting will be held on Thursday, June 19, 2008 and hosted by the LBBLD.

There was no further business, therefore, the meeting was adjourned at 7:23 p.m.

# SOUTHEAST LOUISIANA FLOOD PROTECTION AUTHORITY - EAST

## REGIONAL DIRECTOR'S REPORT

May 15, 2008

### **100-Year Level of Protection**

#### Inner Harbor Navigation Canal:

The USACE sponsored a Partnering Meeting for the IHNC Project on April 24 & 25. The meeting focused on building relationships between the various stakeholders so that work can progress in an efficient and expeditious manner. Various potential pitfalls were identified along with recommendations for avoidance.

Meetings were held with the USACE, CPRA, SLFPAE and other agencies on May 8 & 14 to discuss environmental impacts associated with the various proposed alignments. Much of the discussion involves maintaining adequate flow through Bayou Bienvenue and the GIWW, and potential impacts to existing pipelines. We expressed our O&M concerns regarding a possible combination sector gate w/ adjacent barge gate for Bayou Bienvenue. Shaw agreed to conduct surveys to define the cross section of Bayou Bienvenue so that more accurate modeling could be accomplished.

#### Right-of Way Acquisition:

Several meetings have been held with the USACE, Shaw, CPRA and SLFPAE regarding the acquisition of the needed ROW for the Project. It still appears that State Commandeering will not be an option. We have requested that the Corps provide us with the time required for Federal Condemnation of the property. The CPRA will be taking up the ROW acquisition issue for the IHNC at the CPRA meeting next week.

#### Elevation Map:

The USACE has published a map showing the 100-year level of protection elevations for the hurricane protection levee system in the metro New Orleans area. The elevations depicted are current as of February 7, 2008. It can be found at the following web address:

<http://www.mvn.usace.army.mil/hps/>

## **Submittals**

Copies of the following major submittals are available for review in the SLFPAE office:

- Draft EAR for LPV-105 thru LPV 111 (comments due by May 14)
- LPV 108, Lakefront Project 95% P&S Review – Paris Rd to South Point (comments due by May 27)
- Breakwater at Bonnabel Pumping Station No. 1 95% Review
- Breakwater Structure, Breakwater Bridge, and Pedestrian/Bike Path Bridge at Duncan Canal Pumping Station 96% Review

## **Flood Fight**

The Bonnet Carre Spillway has been closed. The Mississippi River has fallen below 14' at the Carrollton Gage. Flood fight activities are beginning to wind down. Inspections are down to once a day. Daily conference calls with the USACE have been discontinued. Conference calls are now being conducted on Mondays, Wednesdays and Fridays only.

## **Internal Affairs**

Proposals for the Actuarial Study and the Organizational Study & Strategic Plan have been received, studied and recommendations made by the review teams.

On April 18 Steve Spencer and I made a trip to the Bohemia Spillway by boat. The River had overtopped the fuse plug and water was flowing through the spillway. Several photographs of the area were taken and can be made available for your review.

On April 23 we attended a partnering meeting on the Hurricane & Storm Reduction System, Orleans Basin. The various projects along the Lakefront and GIWW were discussed.

On April 29 Bob Lacour, Steve Spencer, representatives of LDOTD and USACE and I went on a walk through of the south end of the 17<sup>th</sup> Street Canal levee adjacent to Bellaire Dr. During the walk we looked at the staked location of the theoretical toe and toe + 6' lines along the alignment. We also met with some of the property owners.

The Association of Levee Boards of Louisiana Annual Workshop was held on May 1 & 2. Commissioners who attended the Workshop should have received their certificates documenting their attendance. Of particular interest was the session on the Public Meetings Law. I have a handout of specific requirements for your review.

On May 6 Steve Spencer and I met with the USACE (Kevin Wagner) to discuss alternatives for interim and 100-year level of protection for a 400' section of levee near coconut beach at West End. On May 9 we went to Baton Rouge to meet with DOTD to discuss the alternatives and get their input. The Corps wants to start constructing the interim protection work as soon as possible.

On May 12 we met with Assistant Secretary Woodley for a "listening session". The meeting was attended by DNR CPRA, SLFPAE, SLFPAW and USACE. Various issues were discussed including the language in the Project Cooperative Agreement, communications, pump stations, peer review, environmental constraints and borrow material.

### **Upcoming Events**

- |             |  |
|-------------|--|
| May 21      | CPRA Meeting<br>Baton Rouge  |
|             | WWL Annual Hurricane Meeting/Dinner (6 pm)<br>1024 N. Rampart St., New Orleans |
| May 22      | Legislative Auditor Evaluation Committee Meeting (10:00 am)<br>LVCC            |
| May 26      | Memorial Day   |
| May 29 & 30 | LA Coastal Engineering Conference<br>Baton Rouge                               |
| June 2 – 6  | SAME-ASCE Midwest Levee Conference<br>Managing Flood Risk Together             |