

August 31, 2006

Paul Bouffard, Special Agent  
Criminal Investigation Division  
U.S. Environmental Protection Agency  
2203 North Lois Avenue  
Suite 815  
Tampa, Fl 33607

**Re: Request for Investigation—Tyndall Air Force Base, Bay County, Florida**

Dear Mr. Bouffard:

I write on behalf of Public Employees for Environmental Responsibility in order to bring to your attention certain activities that we have learned are allegedly taking place in the Florida Panhandle at Tyndall Air Force Base, in Bay County, Florida. These activities were brought to my attention by anonymous sources who have significant access to the operations at Tyndall. These sources are quite concerned about the activities taking place at the base and were particularly concerned about the affect that the activities are having upon Florida's environment. If substantiated these activities would, I believe, constitute criminal conduct that is ongoing and that involves individuals who are serving in leadership roles.

**General Overview**

The nature of the conduct in question involves what is allegedly a consistent pattern of knowingly failing to obtain environmental permits and follow environmental regulations prior to embarking upon construction projects on the base. The program areas include:

- NEPA

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- Dredge and Fill (State and Federal)
- State Stormwater Regulations, e.g., 62-25 F.A.C.<sup>1</sup> that also enforce federal regulations
- NPDES
- Cultural Sites

*The pattern appears to be the result of a belief by senior officials that even if caught the worst that will happen is that the required permit will be issued after-the-fact, thus bringing the base back into compliance.* This, in turn, puts considerable unwarranted pressure upon state and federal agencies that conduct the subsequent permit application reviews to issue the requested permits, rather than resort to formal enforcement and/or permit application denial. Of course, it also means that projects are proceeding without the necessary pre- and post-construction oversight that state and federal laws require—particularly in those instances in which the environmental incursions are not detected by regulators.

Procedurally, once a construction project is considered to be worthy of funding, the person in charge of the project initiates a process designed to secure the allocation of federal funds for the project. This process is initiated through AF Form 332, 19910101 (EF V4) (hereinafter referred to as a “332.”) The 332 requires that several different departments approve the request as it applies to their area of expertise. Once all approvals are obtained the project is then on the way to realization.

One section of the 332 applies to environmental issues. Specifically, line item 23 (which is completed by the CES/CEV section, i.e. the Environmental Flight) indicates whether the proposed project will need an environmental assessment (“EA”). If an EA is needed the reviewer is supposed to indicate the need. Typically, this will be followed by a statement that an “813,” i.e. a form AF IMT 813 (Request for Environmental Analysis), must be completed. The 813, in turn, is designed to identify whether or not specific environmental program areas will be impacted by the proposed project. Once completed, the 813 is certified by the individual performing the examination and at times verified by Base Legal (JA). The project will move forward, or be delayed, depending, in part, upon the results of the 813.

PEER’s investigation into this process began with a request that we submitted to the base under FOIA. That request sought the following documents:

1. All funded 332s associated with all construction projects over \$250,000 in those cases in which said 332s were initiated within the past two years;
2. All 332s initiated within the past two years that are associated with the construction and/or maintenance of boat ramps, marinas, water bodies and shorelines;
3. All NEPA documentation for all funded work orders over \$600,000 in the past two years;

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<sup>1</sup> Florida Administrative Code

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4. All NPDES applications submitted on behalf of Tyndall AFB to the Florida, Department of Environmental Protection over the past two years.

Interestingly, while we received 358 pages of documents, the vast majority were 332s. The 813s that were included were for projects exceeding \$600,000 (as per the FOIA request). We also received a copy of the Generic Permit for Stormwater Discharge from Large and Small Construction Activities (Effective May 1, 2003). This is a generic NPDES Stormwater Permit (“Generic Permit”). We also received two (2) Notices of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities, along with three (3) other notices from the FDEP indicating that the FDEP had approved three (3) other stormwater activities under the NPDES Generic Permit. Thus, from the documents provided by the Air Force, there were a total of five (5) NPDES stormwater applications covering the entire facility for the two year period of 2004—2006.

### **Sources**

Please note that PEER has been contacted by individuals who have a significant working knowledge of the operations on this base. These individuals are available to speak with you in person at your convenience. However, they have requested that all reasonable measures be taken to assure their anonymity at this time.

### **Other Document Requests**

Florida PEER submitted requests for public records to the Florida, Department of Environmental Protection and to the U.S. Army Corps of Engineers. The requests were virtually identical in the sense that both requests sought copies of all permits issued to Tyndall Air Force Base (“Tyndall”), as well as copies of environmental complaints received against the base along with any documents showing the action taken against Tyndall by each respective agency over the past two years.

Both requests were submitted on June 14, 2006. The FDEP finally acknowledged the request and has now provided a response to our request; however, the response is incomplete. Interestingly, the FDEP provided printouts of summaries of permits that had been issued, along with a CD of files from the Hazardous Waste Section. The latter files included letters dating back to 1988 dealing with compliance issues. However, no enforcement files responsive to our request were provided for other program areas such as the SLERP and NPDES programs. Instead, the FDEP indicated that the agency did not believe that its job was to search through its files to locate documents. Thus, we were largely provided documents that were nonresponsive and instead given a significant number of documents that did not deal with the issues that we are looking into. We view the FDEP’s action as deliberate, particularly in light of past dealings with the agency.

The Corps responded to our request by providing documents. The documents reflect that only 5 permits were issued by the Corps during that time period. None of the permits are connected to the activities described below.<sup>2</sup> Further, the Corps provided documentation of only one complaint that the Corps received. Our information is that other complaints were called in to Rick Holden<sup>3</sup> at the Corps. No documents from Mr. Holden were produced. PEER is therefore appealing the Corps response as being insufficient.

**Specific Concerns**

***1. Silver Flag***

Silver Flag is an area that is expected to significantly increase in importance.<sup>4</sup> Overall, there are now twelve (12) separate projects. Completion of these projects in a timely manner is considered critical by senior management. The individual 332s are listed below in chronological order for your benefit. I have also enclosed them with this correspondence.

<b>332 Number</b>	<b>Date of Submission</b>	<b>Date of Approval</b>	<b>Approved By</b>	<b>EA Needed</b>	<b>813 Completion</b>
33570	1/30/03	4/1/04	David H. Dentino <sup>5</sup>	Yes	Unknown
33702	7/31/03	7/7/03	Redacted	No	
33753	6/9/03	9/3/03	David H. Dentino	Yes	Unknown
33812	9/30/03	4/21/04	David H. Dentino	Yes	Unknown
33967	3/18/04	4/21/04	David H. Dentino	Yes	Unknown
33971	3/29/04	4/22/04	David H. Dentino	No	
33973	4/1/04	4/21/04	David H. Dentino	No	
33974	4/1/04	4/21/04	David H. Dentino	Yes	Unknown
33987	4/13/04	4/21/04	David H. Dentino	Yes	Unknown
33993	Illegible	4/21/04	David H. Dentino	Yes	Unknown
33994	Illegible	4/21/04	Brian P. Stahl <sup>6</sup>	No	
34329	3/2/05	6/16/05	David H. Dentino	Yes	Unknown
34464	12/7/04	3/29/05	Lt. Col., Curt A. Van De Walle <sup>7</sup>	Yes	3/15/05

<sup>2</sup> One of the permits did authorize the construction of 2 floating docks; however, this was new construction. The purpose of the docks was to “deploy and retrieve a pollution boom before and after barge fueling operations.”

<sup>3</sup> ACOE, Enforcement Section, Panama City Branch.

<sup>4</sup> Indeed, 332 number 34464 states under Section 9. that “[c]urrently the mission of SILVER FLAG is increasing.”

<sup>5</sup> David H. Dentino is a GS-14. He was the Deputy Base Civil Engineer

<sup>6</sup> Brian P. Stahl is a GS-14. He is the Deputy Base Civil Engineer

The more overt problems with these projects began in early 2005, after an employee in the environmental section indicated on 9 of the 332s that an EA was needed. That employee's name is John Dingwall. Dingwall is a GS-12 and is now retired.

From a string of email traffic that was provided to Florida PEER via anonymous sources it is clear that there was much consternation within Tyndall about the issue of environmental compliance and whether strict compliance would delay completion of the project in question. It appears that concern was raised by another GS-12 employee, Wesley Westphal in or about August 2005. Westphal's primary concern seemed to be that the Silver Flag project was being piecemealed. While individual EA's completed for each project might conceivably be illustrative of the NEPA impacts (or perceived non-impacts) for each such individual project, such an approach could result in conclusions that there was no discernable NEPA impact even though the cumulative effect of the entire Silver Flag development could have a significant overall NEPA impact.

Westphal's concern is not without merit, especially if we consider Executive Order 11988, which was issued on May 24, 1977, almost three decades ago. This order remains in effect today. It sets the national policy of minimizing building in or around floodplains. Section 1 of the order states that:

Each agency shall provide leadership and shall take action **to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities** for (1) acquiring, managing, and disposing of Federal lands, and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.  
(Emphasis added)

Section 2 further requires that "each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain..." Agencies were then tasked, under Section 2(c) of the order, with the following responsibility:

**c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved.** Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the

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<sup>7</sup> This 332 that Van Der Walle approved is for the costliest of the 12 projects. It is estimated to cost \$700,000.00. He was the Base Civil Engineer.

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regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants. (Emphasis added)

**a. Silver Flag Emails**

Emails associated with this issue shed light upon how Westphal's discovery was viewed by senior management within the Engineering Squadron at Tyndall:

-----Original Message-----

From: Stahl Brian P GS-14 325 CES/CD  
Sent: Friday, September 09, 2005 3:55 PM  
To: Van De Walle Curt A LtCol 325 CES/CC  
Subject: RE: Silver Flag Construction Projects

As I suspected...we dropped the ball on a couple of things and the customer has some misinformation on a few other things.

**The 813 was signed by John Dingwall back in the Spring of 2004 and added a note that JA should review to determine if an EA was required. The ball was definitely dropped somewhere between CEV and CEC on this one. We're planning to press on with construction of the ponds, but we do need funding to initiate the EA. *This won't hold up construction.***

The need for retention ponds isn't something that was new since they are always required for the types of projects they want executed. The new part of this issue was the decision to build regional ponds. We think this is a better idea than individual ponds for each facility since it eliminates the need for additional ponds to support future construction. Unfortunately the idea for this approach came late in the game, but I think it's still a good move.

We don't typically do 1391s for projects within the base approval authority, so 1391s were not initially done for these projects. When we learned of the requirement for 1391s we worked them as quickly as possible. But ACC required a full-blown 1391 package complete with Certificates of Compliance signed by FW/CC. This is never a quick process so it did take a while to get the packages to ACC.

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**The grubbing and clearing done by Det 1 allowed us to get the CWE within the \$750K minor construction limit. If we had to add this work to the project, we would have been hard pressed to get the work done for under \$750K.**

There is no fill in the cost estimate since the contractor doesn't think it is needed. If it is needed he will be able to use the soil excavated from the ponds.

The cost for the comm infrastructure was probably another place where we (we being Tyndall) dropped the ball. Although Comm was in on the initial design reviews, the designers assumed the necessary comm infrastructure was in place. It wasn't until late in the game that Comm brought up the fact that the infrastructure wasn't adequate to support all of the new facilities.

The designers were on site for the first time in November 2004 during the Pre-Performance Conference...the 50% design review was in Feb 2005.

The design went back to the CoE because the cost estimate was \$850K. The re-design brought the price down below the \$750 statutory limit.

Brian

(Emphasis added) A copy of this email is attached. Interestingly, Van De Walle did nothing to stop construction in order to allow for a detailed investigation to be completed. Instead, his response was:

-----Original Message-----

From: Van De Walle Curt A LtCol 325 CES/CC

Sent: Monday, September 12, 2005 5:54 PM

To: Birchard Ann M Maj 823 RHS Det 1/CC

Cc: Stahl Brian P GS-14 325 CES/CD; Garner Ann P GS-13 325 CES/CEC

Subject: FW: Silver Flag Construction Projects

Anne,

I was TDY last week and my deputy ran down the responses to your questions (see below).

VR

Curt V

The problems were exacerbated in or about October 2005, when an employee at CES/CEV visited the site of one of the projects, 34329, and discovered that the project was disturbing wetlands and a Native American cultural site. This employee brought the issue to the attention of Steve McLellan, the Chief of Environmental Compliance (GS-12). An archeological study was then hastily performed. Mr. McLellan stated his feelings on the issue in an email that states:

**From:** McLellan Steve A GS-12 325 CES/CEVC  
**Sent:** Wednesday, January 25, 2006 6:24 PM  
**To:** Cintron Jose J GS-12 325 CES/CEV  
**Cc:** Gleason Kenneth GS-13 325 CES/CEV; Keegan Bridget A Civ 325 CES/CEV; Westphal Wesley JP GS-12 325 CES/CEVN  
**Subject:** Silver Flag Cultural Survey

Jose -

The purpose of this is to provide ACC with some background regarding our request for them to reimburse us for the effort.

The Silver Flag regional stormwater ponds project was initiated prior to a cultural resources survey being conducted in the construction area. My first significant involvement in this project was in October when the extent of clearing performed by the Silver Flag heavy equipment folks (as a self-help project) was much more extensive than necessary and impacted adjacent wetlands.

On Wednesday, 21 Dec (several days before Christmas weekend), it was brought to my attention that the initial excavation work on the North Pond had unearthed pottery sherds and shell midden material. Most of the CEV staff was on leave, including our Flight Chief, Cultural Resources Manager, Natural Resources Chief, and Planning (NEPA) Chief (who had only been in the position since October 2005 and had not participated in the original NEPA review of this project). We could find no indication that a cultural survey of the area had been performed. It became apparent that somehow this requirement had been overlooked. Mike Russo, National Park Service archeologist in Tallahassee, was contacted and he agreed to visit the site the following day.

Mike stated his concern that archeological studies conducted in the late 1800's/early 1900's had identified a very significant Native American site somewhere in the vicinity of the Silver Flag area, but the exact location is not known.

The situation can be summarized as:

- It was now Thursday, 22 Dec, and very few people were around to solicit input.
- I, as well as other involved at the moment, would be on leave the following week.
- The SHPO was out until after the first of the year.



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- The contractor wanted to work through the holidays.
- A potentially significant Native American site could be at risk if the project continued with no survey.
- Stopping the contractor would be very expensive.
- Mike Russo called his office and he and several of his folks could provide a survey the following week between Christmas and New Years. The cost for a survey of the two regional stormwater ponds at Silver Flag would be \$15,000.
- Mike believed he could perform a survey the SHPO would accept.
- The Engineering Flight Chief brought to my attention that the HQ 1<sup>st</sup> AF construction site did not have a cultural survey and work would be starting there within a matter of weeks.
- Mike stated they could include a survey of the HQ 1<sup>st</sup> AF site (which was in an area of lower concern from a cultural resources viewpoint) for an additional \$2,000 since they were already over here for the Silver Flag site.
- A scope of work was prepared that afternoon (Thursday, 22 Dec).
- We requested a MIPR to move money to the NPS for Mike and his folks to perform the surveys.
- In an effort to get the necessary work done and not delay the Silver Flag contractor, we determined the most appropriate course of emergency action was to use a funding line item in the Tyndall CEV budget to justify the funds and perform the surveys.
- We'd contact the appropriate folks with ACC after the holiday period and work out arrangements to get reimbursed.
- While I haven't seen the written report, I've heard verbally that no significant cultural resources were found on any of the three sites. These projects can therefore proceed with no concerns about damage to cultural resources.

While no one is pleased with the fact that construction was started prior to a cultural survey, we firmly believe we took appropriate actions at a very difficult time of year to not delay an important project at Silver Flag. Had the surveys been conducted in a more "normal" manner, ACC would almost certainly have paid far more. Mike Russo and his folks at the Tallahassee NPS office did this during the holidays on extremely short notice and at a VERY reasonable cost.

Steve

**Steve McLellan**  
**Chief, Environmental Compliance**  
**119 Alabama Avenue, Stop 42**  
**Tyndall Air Force Base, FL 32403**  
**Comm 850-283-2493 DSN 523-2493**  
**Fax 850-283-3854**

The only project where an 813 was provided (332 number 34464) concluded that a categorical exclusion would apply. The listed categorical exclusion (“CATEX”) for this project is based on an Environmental Assessment (EA) which was done on a project located on main base. It is believed that the project upon which this CATEX is based is insufficiently similar to justify the comparison and thus the exclusion.

The issues of piecemealing the project, impacting wetlands, not following NEPA, as well as the discovery of a Native American cultural site, apparently caused some consternation within senior officials responsible for approval of the projects. As a result, a Risk Assessment<sup>8</sup> was requested by Lt. Col. Curt Van De Walle. The Risk Assessment was expected to address any problems with the communication facility (332 number 34464, which was approved by Lt. Col Van Der Walle).

A word about the Risk Assessment (“RA”) is in order. The preparation of an RA is something that is, upon information and belief, something that is not normally performed by the Environmental Flight Section. Procedurally, there is no provision for conducting such an assessment. The manuals do not provide for it. Thus, it is a document that appears to have been prepared solely for the purpose of providing cover for those individuals who authorized initiation of work at Silver Flag without first following the required environmental assessments. With that said, the Risk Assessment (“RA”) begins by summarizing a problem existing with all Silver Flag projects:

The EIAP assessment at that time categorically excluded (CATEX) the requirement for environmental assessments (EA) on each of the eleven proposed actions without appropriate 325 FW/JA coordination. **By the time this oversight was discovered in Aug 05, construction contracts had been awarded for all eleven requirements.**

(Emphasis added)

The RA goes on to note that the delays associated with these oversights could push the project cost over the \$750,000.00 mark. The practical affect of pushing a project above the \$750,000.00 level is that the project then has to go MILCON, which means the Army Corps of Engineers construction division would do the design, thus creating more roadblocks and more oversight to ensure compliance with environmental laws. This is something that is frowned upon.<sup>9</sup> It injects more delays into the process. The RA then proposes two alternatives: “Alternative 1: Delay Construction of Communications Training Facility Pending Completion of Environmental Assessment.” and “Alternative 2: Proceed with Construction of Communications Training Facility Concurrent with EA.” The RA proceeds to discuss each alternative. With respect to the first alternative it concludes:

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<sup>8</sup> A copy of the Risk Assessment is attached hereto.

<sup>9</sup> In fact, one HQ official who was providing oversight for MILCON projects, raised objections to the use of improper environmental issues and was subsequently removed from the project.

The risk associated with this alternative is loss of current funding for facility construction, with no certainty for future funding as MILCON. The level of risk is very high.

Discussion of the second alternative is quite illuminating. It states, in pertinent part, that:

The proposed site for the Communications Training Facility is in a developed area with no known ground contamination, and will not impact wetlands. There is no expected impact on threatened or endangered species or biological resources. The ground surface of the proposed site shows no visible cultural artifacts or signs of significant historical/cultural activity, however a sub-surface archeological survey has not been conducted. **Failure to complete the environmental impact analysis process prescribed by NEPA is not a criminal violation and does not impose punitive measures or administrative fines.**

(Emphasis added) The analysis nevertheless warns:

**However, failure to complete NEPA actions could result in inadvertent environmental impact having the potential for criminal liability under different statutes.** For example, adverse construction impacts on threatened or endangered species constitute a violation of the Endangered Species Act. Similarly, inadvertent destruction of significant cultural artifacts or human remains in the absence of an EA violates the Historic Preservation Act.

(Emphasis added)

The conclusion with respect to the second alternative is that:

Risk of this alternative also includes inadvertent environmental impact leading to criminal violations under statutes other than NEPA. **Based on informal evaluation of the proposed site from an environmental and natural resources perspective, the level of this risk is considered low.**

(Emphasis added)

The final conclusion of the RA is:

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**Conclusion.** The level of risk of potential adverse actions described in Alternative 2 does not outweigh the nearly certain loss of funding resources for construction of the Communications Training Facility as described in Alternative 1. **It is therefore concluded that construction of this facility should proceed concurrent with completion of the EA.** However, management practices and construction techniques should be implemented by the construction contractor to allow discovery and handling of any subsurface cultural artifacts or remains in a manner that allows their preservation.

(Emphasis added)

It is unclear when this RA was finalized. However, it is certainly clear that it had an impact upon senior officials. On January 17, 2006, Lt. Col. Van Der Walle, apparently concerned about personal liability, sent the following email to Ken Gleason:

**From:** Van De Walle Curt A LtCol 325 CES/CC  
**Sent:** Tuesday, January 17, 2006 3:28 PM  
**To:** Garner Ann P GS-13 325 CES/CEC; Gleason Kenneth GS-13 325 CES/CEV  
**Cc:** Stahl Brian P GS-14 325 CES/CD  
**Subject:** RE: Contract Hold regarding the Communication Training Facility at Silver Flag Project

What are the implications/punishments for starting construction before the NEPA actions are complete?

CAV

To which Ken Gleason responded:

**From:** Gleason Kenneth GS-13 325 CES/CEV  
**Sent:** Tuesday, January 17, 2006 4:05 PM  
**To:** Van De Walle Curt A LtCol 325 CES/CC  
**Cc:** Stahl Brian P GS-14 325 CES/CD; Garner Ann P GS-13 325 CES/CEC  
**Subject:** RE: Contract Hold regarding the Communication Training Facility at Silver Flag Project

Boss, **There is no enforcement action associated with NEPA in terms of administrative fines or criminal liability.** Objections during the public review of the EA could lead to a legal injunction that stops work on the construction project. This brings with it some amount of bad publicity for Tyndall and bad karma with the off-base

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community. And of course it would bring construction cost growth due to government delays and possible design changes. **It is highly unlikely that JA would support this course of action**, and would likely voice this to wing leadership as CYA.

v/r Ken

(Emphasis added)

Gleason followed this email with another assessment on February 6, 2006, at which time he provided Van Der Walle with a copy of the RA. Gleason told Van Der Walle that:

-----Original Message-----

**From:** Gleason Kenneth GS-13 325 CES/CEV  
**Sent:** Monday, February 06, 2006 4:07 PM  
**To:** Van De Walle Curt A LtCol 325 CES/CC  
**Cc:** Stahl Brian P GS-14 325 CES/CD; Garner Ann P GS-13 325 CES/CEC  
**Subject:** Risk Assessment for Comm Training Facility

Boss, attached risk assessment for Silver Flag Comm Training Facility, as discussed. **My input is that the level of risk of criminal violation associated with proceeding in advance EA completion is low and doesn't outweigh the expected loss of current project funding as a result of waiting for EA completion.** Of the environmental impacts considered, we appear more vulnerable with regards to possible cultural artifacts or remains. As a mitigating measure, I've suggested that we require contractor practices be incorporated to avoid destruction of potential artifacts/remains. We don't yet know the specifics of appropriate contractor practices but will discuss with the SHPO. I expect use of a backhoe and trencher will be ok, but each load of excavated soil may require a quick inspection by someone who knows what their looking at. This would involve some additional cost, but shouldn't be prohibitive.

v/r Ken

(Emphasis added)

Van De Walle, then made the decision to proceed without first following NEPA requirements:

From: Van De Walle Curt A LtCol 325 CES/CC

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Sent: Monday, February 27, 2006 12:30 PM  
To: Gleason Kenneth GS-13 325 CES/CEV; Garner Ann P GS-13 325 CES/CEC  
Cc: Stahl Brian P GS-14 325 CES/CD; McLernan Joseph V GS-12 325 CES/CEV  
Subject: RE: Risk Assessment for Comm Training Facility

Ken/Ann,

Please press forward with the construction of the Silver Flag Comm Training Facility per the recommendation in the attached ORM. The ORM indicates that "management practices and construction techniques should be implemented by the construction contractor to allow discovery and handling of any subsurface cultural artifacts or remains in a manner that allows their preservation. "

Please develop a set of control measures (eg - initial training followed by weekly site visits by Natural Resources personnel to ensure the construction doesn't jeopardize any natural or cultural artifacts on the site, and written acknowledgement by the contractor that they understand construction will cease if any artifacts are encountered and will not commence until a plan of action is agreed upon by the government, etc). Thanks for your work on this. I hate to take any risk whatsoever, but you've done a good job of capturing the risk involved and I am reasonably assured that we are safe to proceed.

VR

Curt V

Curt A. Van De Walle, Lt Col, USAF  
Commander, 325th Civil Engineer Squadron  
voice: DSN 523-3283  
Comm: (850)283-3283  
Fax: (850)283-3983  
e-mail: curt.vandewalle@tyndall.af.mil  
"One Team, One Vision"

As a direct result of Lt. Col. Van De Walle's order, the projects are proceeding ahead at this time concurrently with work on the EA for each such project. In this fashion it is difficult to see how a legitimate EA will be produced should significant environmental impacts be discovered. Additionally, it is unclear if the EA was ever even done.

The practical effect of this situation is that the following activities are ongoing and are allegedly violations of environmental regulations:

- Stormwater: Violations of 62-25 F.A.C.<sup>10</sup> and NPDES--Neither required permit was obtained prior to starting construction. Ponds may have been designed for installation partly in a wetland.
- Dredge and Fill: Site was not delineated for wetlands prior to beginning work and construction caused impact to wetlands. It is believed there was no dredge and fill permits obtained for projects. (Of note, in 2004 Silver Flag also had an illegal wetland fill.)
- Unknown impact to Cultural and Endangered Species since most of the projects started prior to survey.
- NEPA: Essentially ignored until after the fact.

## 2. *Marinas*

### a. **Background**

As you are no doubt aware, the FDEP typically issues emergency orders immediately after the passage of significant storm events. Such was the case for both hurricanes Ivan and Dennis. The emergency final order for Ivan is available at [http://www.dep.state.fl.us/mainpage/em/2004/files/04/ivan/Ivan\\_EFO.pdf](http://www.dep.state.fl.us/mainpage/em/2004/files/04/ivan/Ivan_EFO.pdf). The emergency final order for Dennis is available online at [http://www.dep.state.fl.us/mainpage/em/2005/dennis/files/Second\\_Amended\\_Dennis\\_Final\\_Order\\_090705.pdf](http://www.dep.state.fl.us/mainpage/em/2005/dennis/files/Second_Amended_Dennis_Final_Order_090705.pdf). Both final orders follow a boilerplate format. With that in mind, I will only refer to the final order for Dennis. Ivan's final order is similar, however. The Emergency Final Order for Dennis addressed the repair of structures in wetland or sovereign submerged lands when those structures were damaged or destroyed by the storm. Section A.2.a.1. states that:

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<sup>10</sup> Florida Administrative Code

a. **No Notice Required:** The following activities are authorized to be conducted under this Order without notification to the Department or a water management district:

(1) Temporary and permanent repair or restoration of structures and drainage systems that are not completely destroyed to the conditions, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to the Hurricane, provided the repair and restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems, and provided any such structures or drainage systems in, on or over sovereignty submerged lands are water dependent. This may include the use of different construction materials or minor deviations to allow upgrades to current structural and design standards, or to replace a seawall with a rip rap revetment.

It is clear from the wording of this provision that these structures could be replaced without notifying the FDEP, but only provided that (1) the structures were legally in place immediately prior to the storm and (2) the damaged structure was replaced with a structure of the same structural design. Under Section A.4.h. of the order, all repairs must have been completed on or before July 9, 2006. Section A.5.a.2. limits activities on sovereign submerged lands to restoration activities on those lands that the Board of Trustees had previously given approval. *In other words, if the structure was illegally on these lands prior to the storm, the repair/replacement of the structure after the storm would not serve to retroactively legitimize its existence.* Finally, according to Section A.6. the violation of any terms of the order constitutes a violation of Florida Statutes.

**b. Beacon Beach Marina**

With the above as background I direct your attention to the Beacon Beach Marina. This marina is in the Aquatic Preserve. Part of the marina was dredged from uplands and part is located in waters of the state. There are several docks associated with this marina. The docks in question are located in waters of the state and require a sovereign submerged lands lease from FDEP. Beacon Beach Marina is a commercial marina and provides fueling services, and rents boat slips. This marina should not be exempt from a lease, is strictly recreational and is not used for National Defense. However, Tyndall does not agree that the state owns this land and therefore Tyndall has not obtained a lease. They



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had nevertheless agreed at one time to pursue a management agreement, but we do not believe that this has been actively pursued, much less finalized.

When hurricanes Dennis and Ivan struck the Florida Panhandle they affected areas encompassed by Tyndall. Docks associated with the marina were destroyed and needed to be rebuilt. Officials at Tyndall decided, however, that the reconstruction would include a reconfiguration of the entire marina itself. Management was notified that any reconfiguration of this marina would need a permit from FDEP and the Army Corps of Engineers. There were sea grasses located beneath the existing (pre-reconfiguration) dock. Civil Email traffic indicates that Engineering and Environmental leadership was aware of this prior to any contracts being awarded and the beginning of construction.

In addition, however, the scope of the project changed later on to provide for replacing damaged docks with floating docks. The original docks were not floating docks. Thus, changing to floating docks would have required Tyndall to first obtain permits.

The pertinent email trail picks up months after Ivan had made landfall in North Florida:

-----Original Message-----

From: Fauson Ernest F GS-12 325 CES/CECC  
Sent: Wednesday, January 26, 2005 1:53 PM  
To: Reed Teresa Maj 325 FW/JA  
Cc: Garner Ann P GS-13 325 CES/CEC  
Subject:

Maj. Reed,

A short note to start a dialog in our quest of the illusive "Submerged Land Lease" opinion. You had related in our meeting you would need a written proposal. I assume this to mean what we want to accomplish, i.e... Repairs to the damaged docks and boardwalk cause by Hurricane Ivan? We must also submit a request for a legal review. May I do this electronically via email or attachment, or do you need the request on letterhead with a specific signature block? Do you have a feel from the AF Real Estate/Facilities Community on their view yet?

Refer below on an email to Ann Garner, Chief of Engineering today. The information referenced was discussed yesterday afternoon.

Ann,

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I will be getting with Maj. Reed/Legal to ascertain status of her legal opinion re... "Submerged Land Lease" issue. She is currently checking with the AF Facilities community to get the feel of the Air Force's opinion. John Dingwall/Environmental Engineer has changed his requirement for a NEPA form 813 and is now saying because we are only seeking to repair back to original condition; this is covered under section CA-TEX A2.3.10 and an 813 is not required. He had heard originally we were checking into floating docks and the change (floating docks) would have required the additional authorizations. Michelle Gawronski/CEV Biologist relates we could still use the "emergency repairs" section of the statute to proceed forward with repairs (bypassing the permitting requirement) depending on the legal office's jurisdictional opinion. All that being said.....We currently have no schedule. The contract is completed, Contracting is waiting for our (CE) approval to award. We are waiting on the legal opinion to weigh responsibility vs. possible coincidences. Since we are only repairing what was damaged by Ivan, and not changing anything from its original configuration, Michelle feels the DEP will probably not be to upset in any case. I will brief you further as I attain more information or as the issues progress.--Fred--

Please let me know what I need to get for you to get this ball rolling. Thanks--Fred—

Given the problems with the sovereign submerged lands lease, the decision was then made to move forward with repairing/replacing the boardwalk while awaiting a decision from the legal division as to how to handle the marina that was on sovereign submerged lands:

From: Fauson Ernest F GS-12 325 CES/CECC  
Sent: Tuesday, February 01, 2005 1:15 PM  
To: Szymanski Paul M SrA 325 CONS/LGCAA  
Cc: Rozell Daryl GS-13 325 CES/CECC; Garner Ann P GS-13 325 CES/CEC; Gawronski Michelle GS-11 325 CES/CEV; Gleason Kenneth GS-13 325 CES/CEV; Reed Teresa Maj 325 FW/JA; Van De Walle Curt A LtCol 325 CES/CC; Dentino David H GS-14 325 CES/CD  
Subject: Hurricane Ivan Projects (Marina and Boardwalk)

Paul,

In reference to our conversations concerning separating the Boardwalk from the Marina; the decision has been made to separate the two and proceed forward with the work at the Boardwalk. We

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will wait on the jurisdictional issue from Base Legal prior to proceeding with the Marina. The crux of the matter is that the time suspense for production under emergency conditions is extremely short. If we wait any longer, we may get into a situation where we could be held up for 7 months to a year or more on permitting. We cannot afford any further delays. The submerged land lease issue before base legal does not apply to the boardwalk. Michelle Gawronski/CEV, Ann Garner/CEC, Daryl Rozell/CECC and I all concur. Lt. Col. Van De Walle/CE, Lt. Col. Piccolo/SVS, Col. Sayles/MSSQ, and Col. Dickerson/FWCV have all expressed an interest in seeing this done. Please separate the two projects and proceed forward with awarding the boardwalk repairs. Thanks for your support--Fred--

However, it is also clear that there was pressure being applied from above to move forward with construction at the marina as well:

-----Original Message-----

> From: Van De Walle Curt A LtCol 325 CES/CC  
> Sent: Tuesday, February 01, 2005 5:37 PM  
> To: Fauson Ernest F GS-12 325 CES/CECC; Rozell Daryl GS-13 325> CES/CECC  
> Cc: Garner Ann P GS-13 325 CES/CEC; Dentino David H GS-14 325> CES/CD  
> Subject: RE: Updates  
>  
> Daryl,  
>  
> The contractor is performing the application in this manner because> we're allowing him to do so. Was this negotiated into the contract from> the beginning, or was the schedule finalized after the award? If after> the award, then we screwed up and should tell the contractor that this> does not meet our mission needs. If before the award, we're probably> stuck with it. I need to know either way so I can respond to the e-mail> from Lt Col Stinchcomb.  
>  
> As far as the boardwalk/marina goes, let's press with both if Legal> will let us. If JA nonconcur, we'll let them explain to the Wing CC why> his marina isn't being done.  
>  
> VR  
>  
> CAV

and

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> -----Original Message-----

> From: Van De Walle Curt A LtCol 325 CES/CC

> Sent: Wednesday, February 02, 2005 9:14 AM

> To: Garner Ann P GS-13 325 CES/CEC

> Cc: Dentino David H GS-14 325 CES/CD

> Subject: RE: Updates

>

> Ann,

>

> Let's work the boss's priorities. Whether we like it or not, these are> the types of items that engage MSG (and Wing) leadership. The high-vis> projects aren't always the highest priorities, but they get us all sorts> of unwanted attention, so it's in our best interest to put these fires> out. That doesn't mean we let the airfield projects fall by the wayside .

>

>> By the way, please stop by and give me an update on where we are with the> runway extension MILCON and closure of Taxiway J. Sorry I had to bolt> yesterday, but I had to go to the DCG Hotwash, and I knew the OG folks> were in good hands.

>

> VR

>

> CAV

The decision to move forward was made by Lt. Col Van De Walle:

Sent: From: Van De Walle Curt A LtCol 325 CES/CC  
Thursday, February 03, 2005 12:06 PM  
To: Stinchcomb Edward LTC 325 MSG/CD  
Cc: Piccolo Marc D Lt Col 325 SVS/CC; Garner Ann P GS-13 325 CES/CEC; Reed Teresa Maj 325 FW/JA  
Subje RE: Updates

Ed,

Just got an update this morning. My engineers have been pretty busy working issues with the Runway Extension MILCON project. I assumed that is a higher priority. If not, please let me know and I'll be sure to pull them off next time.

Basically, the contractor can phase the project to do the projects sequentially, but it will mean that the projects extend into the April timeframe. If they do them concurrently, they can finish them both sometime in March.

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I also bumped into Lou South yesterday at the Fitness Center, and he stated that he wasn't too concerned that the projects would be accomplished at the same time. However, if I had to make the call, I'd do them sequentially to avoid the bad press.

With regards to the Marina, I understand that FDEP has given us the go ahead to do the Marina Project at the same time as the Boardwalk, so we intend to press. We're going to attempt to get a temporary walkway out to the NCO Beach into the contract during the time of construction; as long as monetary and permitting issues don't prevent us from doing so, that is. I don't have a timeline yet. The Form 9's have been approved/certified at CONS. We were just waiting until we could work a solution to the legal/permitting issues. I don't think JA is 100% on board with us yet, but I spoke with Maj Reed yesterday and she was expecting to hear something today.

Thanks.

VR

CAV

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Thus, work towards construction began, as the following email string demonstrates:

-----Original Message-----

From: Fauson Ernest F GS-12 325 CES/CECC  
Sent: Monday, May 02, 2005 2:10 PM  
To: Van De Walle Curt A LtCol 325 CES/CC; Rozell Daryl GS-13 325 CES/CECC; Garner Ann P GS-13 325 CES/CEC; Piccolo Marc D Lt Col 325 SVS/CC; LaFrance Gerald J CIV 325 SVS/SVB  
Subject: Boardwalk/Marina

Good Afternoon All,

Everyone seems to be looking for an update on the Marina and Boardwalk. "Straight from the job superintendent". Current progress on the Marina: the gas dock is completed, the mooring area is proceeding slowly due to the fact the contractor is working from boats and barges rather than land. He says Marina construction will be completed within the next five weeks (hopefully 4 weeks). The boardwalk will also start in the near future. He feels this will take no more than 6 weeks (could be as short as four). Work on the

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boardwalk will be phased, that is to say, they will only take apart what they can repair that same day. This will slow work dramatically but will allow the public at least some access to the beach. And of course Shell Island to follow. If all goes well with few rain/weather delays, we might be completed by the 4th of July holiday weekend. Aggressive scheduling for a 180 day project! Feel free to phone me for additional information as required.--Fred--

-----Original Message-----

From: Van De Walle Curt A LtCol 325 CES/CC  
Sent: Monday, May 02, 2005 2:16 PM  
Fauson Ernest F GS-12 325 CES/CECC; Rozell Daryl GS-13 325 CES/CECC; Garner Ann P GS-13 325 CES/CEC  
Dentino David H GS-14 325 CES/CD  
RE: Boardwalk/Marina

Fred,

I need to have actual dates applied to the information below. Also, I'm unsure what you mean by the statement about Shell Island ... unless you're just implying that after the Marina gets fixed our folks will have better access to Shell Island via the Marina.

What is the actual Contract Completion date for the project? I want to make sure everyone understands that right up front.

Thanks.

VR

CAV

Curt A. Van De Walle, Lt Col, USAF  
Commander, 325th Civil Engineer Squadron  
voice: DSN 523-3283  
Comm: (850)283-3283  
Fax: (850)283-3983  
e-mail: curt.vandewalle@tyndall.af.mil

From: Fauson Ernest F GS-12 325 CES/CECC  
Sent: Tuesday, May 03, 2005 11:00 AM  
To: Van De Walle Curt A LtCol 325 CES/CC

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Cc: Rozell Daryl GS-13 325 CES/CECC; Garner Ann P GS-13 325 CES/CEC; Dentino David H GS-14 325 CES/CD; Piccolo Marc D Lt Col 325 SVS/CC; LaFrance Gerald J CIV 325 SVS/SVB  
Subject: RE: Boardwalk/Marina

Not a problem sir,

The actual contract completion date is 17 Sept 2005 on a 180 day execution period. As I stated previously, the Gas dock is completed. The mooring area (east cove docks) are being worked currently with an estimated completion date of 10 Jun. The Boardwalk is scheduled to begin 25 May and completed 30 Jun. The pier/walkway at Shell Island will begin around 5 Jul and be completed approx. 5 Aug 2005. This is an aggressive schedule but any phases could be completed before schedule or weather delays could cause the contractor to fall behind this schedule. He has 42 days from this proposed completion date to his contractual completion date of the 17th of September (should any unforeseen problems/circumstances arise). Hope this answers your concerns.--  
Fred--  
"One Team, One Vision"

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To complicate matters further, Hurricane Dennis struck the area on July 9, 2005, after which it appears that things began to change again in the sense that the need for immediate fixes seemed to be predominate in the minds of senior staff:

From: Piccolo Marc D Lt Col 325 SVS/CC  
Sent: Thursday, July 14, 2005 7:28 AM  
To: Coverston Anne M Maj 325 CES/CEO  
Cc: Van De Walle Curt A LtCol 325 CES/CC; Shircel Randal L CIV 325 SVS/SV  
Subject: RE: Hurricane Damage

Anne - one of the most immediate issues is the debris at the marina club -both in the water and out. It's really starting to stink. Can some of the crews come out and pick up the big piles we left? What's the plan forgetting the big pieces of debris out of the water? As for the damaged finger piers - is there an opportunity to discuss replacing these with floating docks? The floating docks have a much better survival rate and would be worth the investment if we can make it happen.

Thanks

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mp

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From: Coverston Anne M Maj 325 CES/CEO  
Sent: Thursday, July 14, 2005 8:22 AM  
To: Garner Ann P GS-13 325 CES/CEC; Rozell Daryl GS-13 325 CES/CECC; Gleason Kenneth GS-13 325 CES/CEV  
Cc: Van De Walle Curt A LtCol 325 CES/CC; Stahl Brian P GS-14 325 CES/CD  
Subject: FW: Hurricane Damage

Good Morning Everyone...

I know this was discussed before about putting floating docks at the marina rather than the wooden docks...I seem to remember this being an environmental show-stopper but can't recall the specifics...I think Daryl is under the same impression. Please let us know what we can/cannot put out at the marina....thanks.

Anne

Management's input was interesting in that the concept of adhering to environmental regulations was deemed a requirement at first:

-----Original Message-----

From: Gleason Kenneth GS-13 325 CES/CEV  
Sent: Thursday, July 14, 2005 12:56 PM  
To: Coverston Anne M Maj 325 CES/CEO; Garner Ann P GS-13 325 CES/CEC; Rozell Daryl GS-13 325 CES/CECC  
Cc: Van De Walle Curt A LtCol 325 CES/CC; Stahl Brian P GS-14 325 CES/CD  
Subject: RE: Hurricane Damage

Anne, the previous discussion of floating docks centered on the slips east of the club house, and it appeared use of floating docks would require reconfiguration of the pilings which my subject matter experts at the time felt would present a formidable permitting obstacle. I'd like to lean forward on this because it makes sense from both an environmental and engineering perspective to go with floating structures - we don't spread timber debris around the bay



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each time there's a storm, and it's more cost effective and reliable. Panama City has floating docks at both the City Marina and St. Andrews Marina. If the SVS folks or you can provide a layout of the proposed pilings and superstructures, we'll be glad to explore this with the appropriate regulators.

Ken

The above email from Ken Gleason would leave one with the impression that work would only proceed if the FDEP and/or the ACOE approved. However, it is clear that shortly after the above email was sent, pressure was being applied to begin quickly on the restoration project. Thus, work began in earnest to move forward with construction of floating docks. Ann Garner, however, cautioned about the environmental issues facing them:

From: "Garner Ann P GS-13 325 CES/CEC"  
Sent: Thursday, August 11, 2005 6:15 AM  
To: "Rozell Daryl GS-13 325 CES/CECC"  
Cc: "Fauson Ernest F GS-12 325 CES/CECC"; "Gleason Kenneth GS-13 325 CES/CEV"; "McLellan Steve A GS-12 325 CES/CEV"; "Reed Teresa Maj 325 FW/JA"; "Rogers Robert C 1Lt 325 CES/CECS"; "Coverston Anne M Maj 325 CES/CEO"; "Stahl Brian P GS-14 325 CES/CD"  
Subject: RE: Storm Damage Repair

Again, a cautionary note for any work at Bonita Bay and Beacon Beach. Make sure we've factored in environmental costs, permitting and time delays. I understand Fred is waiting on proposals from 2 possible contractors and will run those proposals by CEV for their evaluation of NEPA, sovereign submerged lands implications, and Corps and FDEP permitting. Thanks!

The contract was nevertheless awarded:

-----Original Message-----

From: Hargett Charles L TSgt 325 CONS/LGCA  
Sent: Wednesday, October 26, 2005 1:17 PM  
To: Fauson Ernest F GS-12 325 CES/CECC; Kelley John C MSgt 325 SFS/SFOS; Powers John P GS-10 325 CES/CEFO; Cintron Jose J GS-11 325 CES/CEV; Best Edward MSgt 325 FW/SEG; Stewart Robert E Contr 325 CES/CECC  
Cc: Kirkland Marlon J GS-10 325 CES/CECC; Rozell Daryl GS-13 325 CES/CECC; Longstreet Kenneth F CIV 325 CONS/LGCB  
Subject: Boardwalk PreCon

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This is an invitation to attend the preconstruction conference for the newly awarded boardwalk and floating docks contract on Monday, 31 Oct at 1000 in the 325 CONS (bldg 647) conference room. If you have any slides for a PowerPoint presentation, please forward them to me so I can insert them into the briefing. Please acknowledge whether or not you or someone from your office will be in attendance.

Thank you,

Subsequently, work began on the project.<sup>11</sup> It is our belief that neither FDEP, nor the Corps, ever gave Tyndall authorization to remove pilings and reconfigure the marina.<sup>12</sup>

### c. Other Marina Issues

Another marina at issue is Bonita Bay Marina. This facility also is a commercial facility which, rents boats and refuels them. This marina also is required to have a lease and permits from both FDEP and the Army Corps of Engineers. Tyndall has awarded (under 332 number 34513) another contract to redo the marina at Bonita Bay Marina, without permits first being obtained. Once again, the FDEP records indicate that a permit application was received by the FDEP on June 12, 2006, and a permit was issued on July 19, 2006.<sup>13</sup> However, we do not know if the permit that was issued was a permit to cover the actual reconstruction.

The Air Force supplied us with no information, e.g. 332s/813s etc., regarding a project known as Hogs Bayou, even though the issue involved dredging and filling operations that would have been covered under section 2 of our FOIA request. The project involves the dredging and filling of a boat ramp in order to accommodate a boat used by General Mayes on base. My sources believe that the work was done within the past two years and that no permits were obtained for the same prior to its construction.

Tyndall also reconstructed a boardwalk accessing the NCO Beach,<sup>14</sup> which was located in wetlands. They could have replaced the boardwalk without permits under the terms of the FDEP's emergency order identified above, but instead they wanted to change the

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<sup>11</sup> Interestingly, Tyndall was clearly aware of the need to obtain a permit from the Corps in situations in which it was constructing floating docks. We know this because the Corps, in response our FOIA request, provided us with a copy of permit number SAJ-2005-5386 (GP-MMW), that was issued to Tyndall on June 3, 2005. The purpose of the permit was to authorize the construction of two floating docks in Fred Bayou at Florida Street, Tyndall AFB.

<sup>12</sup> FDEP did issue a permit is for a stormwater swale exemption under 62-25 FAC. But this permit would not have covered the work discussed in this section.

<sup>13</sup> Significantly, the issue date was five days after PEER faxed its records request to the FDEP. Given that the FDEP offices involved are relatively small offices it is inconceivable that the agency personnel did not know how to locate documents responsive to our request.

<sup>14</sup> It is also possible from the email traffic that the boardwalk at Shell Island was replaced without permits.

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boardwalk and thus pulled out the pilings, which triggered a need for permits from both FDEP and ACOE. They didn't pursue any permits. See 332 number 34513.

The email traffic states they also repaired a dock at Shell Island beyond its original configuration. This would have required permits from Both FDEP and ACOE. See 332 number 34513.

Another issue for consideration is whether or not the docks that were being replaced on these many projects even had initial FDEP and Corps permits authorizing their original construction. This may indeed have been the case for some of them. Thus, even replacing them to their original configurations would not have been legal.<sup>15</sup>

Our analysis of this situation leads to a rather inescapable conclusion. Just as in Silver Flag, supra, the attitude of senior staff on base is one of moving forward with projects that require prior approval, i.e. permits, from other agencies. If caught, these individuals seem to count on their status as a federal agency, particularly since they are military, in order to stave off any significant consequences to their actions. It clearly does not appear to be a single isolated incident, but rather a pattern.

### 3. *NESHAP*

There is some doubt as to whether or not NESHAP requirements were complied with. At this point I do not have any information to state one way or the other. However, there were a significant number of 332s provided in response to our FOIA request. My sources have indicated to me that the LAC on much of this work was Aztec Environmental, Inc., therefore, I thought you should be aware of the same. Given this operating environment in which project costs and no delays seem to be held at a premium it would seem justified to look into Aztec's operations on this base.

### 4. *Other General Issues*

The issues raised above do not appear to be isolated events. What has been reported to me includes repeated violations of dredge and fill regulations. Essentially these violations are violations scattered throughout the base wherein stormwater ponds, docks etc. have been constructed and/or remodeled without prior permitting from state and/or federal authorities having been first obtained. Once built, there also seems to be a problem with a lack of proper stormwater treatment. There is also concern that a concrete batch plant on the base was likely operating without the proper NPDES permit.

The attitude seems to be one of proceed ahead and, if caught, ask forgiveness. The attitude also seems to be the result of a belief that in particular the FDEP and ACOE

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<sup>15</sup> The ACOE was made aware of this situation prior to construction beginning. It is our belief that the Corps did nothing with this information in the way of enforcement. The FOIA response included no enforcement documents.

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would do nothing to the base even if the violations are discovered. Hence, there is little incentive to apply for, and obtain, permits prior to undertaking the activity in question.

### **Perceived Motive For The Violations**

Given the number of military operations around the globe, there is increased pressure upon bases such as Tyndall to improve their readiness capability. Funds are allocated for projects and it is expected that the projects will be completed in a timely manner, consistent with mission objectives. If the projects are delayed the risk of losing the money allocated for the project increases. Thus, there is significant pressure upon both civilian and military personnel to streamline the approval process to the maximum extent possible. In addition, the FDEP and ACOE seem to have little incentive or motivation to take enforcement against Tyndall. Environmental concerns appear to be secondary, at best.

Please feel free to contact me for any further information that you may need on the issues contained herein.

Sincerely,

Jerry Phillips  
Director  
*Florida PEER*

Encl.