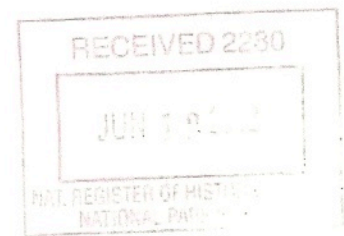




DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY  
CIVIL WORKS  
108 ARMY PENTAGON  
WASHINGTON DC 20310-0108

MAY 31 2012



Mr. J. Paul Loether  
Chief, National Register of Historic Places  
National Park Service  
1849 C Street, N.W.  
Washington, D.C. 20240

Dear Mr. Loether:

I am responding to your May 4, 2012 letter concerning the National Register of Historic Places (NRHP) Nomination of the New Orleans Levee Breach Sites, 17<sup>th</sup> Street and Inner Harbor Navigation Canals (IHNC), Orleans Parish, Louisiana, which you forwarded on December 27, 2011. After evaluation and consideration by my office and the Corps Headquarters, I have determined that the nomination should not be forwarded to your office under 36 CFR Part 60. The content of the nomination document is deficient in numerous respects on matters which are currently the subject of litigation and appeal before the United States Federal District Court for the Eastern District of Louisiana and the United States Fifth Circuit Court of Appeals and it fails to state a proper historical reason for finding the property is of exceptional importance under Criteria Consideration G to 36 CFR Part 60.4.

This nomination concerns events that occurred less than seven years ago. Pursuant to Historic Preservation regulations, a nomination must demonstrate that a property is of exceptional importance to overcome the fifty-year period that has been established under the regulations as a guide for evaluating and ensuring an informed, dispassionate judgment as to the importance of a property and its historical importance. This nomination fails in that regard by focusing on the causes of specific floodwall failure rather than the effect of the flooding events on the community. The latter is the proper context for evaluating the exceptional importance of a property under the regulations. Such an evaluation needs the perspective of time to properly evaluate the historic importance of the nominated sites.

Turning to the specifics of the nomination, the Louisiana National Register Review Committee has declined to recommend this same nomination in substantially its current form because of the length of the nomination and the lack of Committee expertise in the subject matter. Also, the nomination document relies in substantial part on the opinions of the plaintiffs' litigation experts in the In re Katrina Canal Breaches Consolidated Litigation, No. 05-4182 (E.D.La.) to state in definitive terms the causes and reasons for breaches occurring at two of the floodwalls contained in the Lake Pontchartrain and Vicinity Hurricane Protection Project (LPV). However, no consensus has been reached on these issues, and the United States' experts in the litigation have provided opinions opposing those of the plaintiffs' experts. The opinions on causation

and levee failure as set forth in the nomination document are being vigorously disputed in the ongoing litigation, including a trial scheduled to commence on September 10, 2012 in New Orleans concerning the IHNC breach that is the subject of the nomination. In addition, the document inaccurately states that the decision rendered by the federal court in January of 2008 "held the US Army Corps of Engineers responsible." That decision, however, dismissed all claims against the United States and was affirmed by the appellate court on March 2, 2012. Also, not all studies agree on the failure mechanisms of the levee and floodwall breaches, as stated by the nomination, which is a contested issue in litigation and should not be used as a factor in evaluating whether the property is of exceptional importance.

Finally, the nomination's selection of the two sites as representative of the breaches along the entire LPV or as the impetus for the legislative efforts and reforms set forth in the nomination misrepresents the facts. The overwhelming majority of breaching along the LPV during Hurricane Katrina occurred on levees and not floodwalls, particularly the levees bordering St. Bernard Parish. It was the performance of the entire LPV system and the lessons learned on many fronts that resulted in legislative efforts and reforms. The attribution of those efforts and reforms to just these two breaches and their presentation as representative of the LPV system's performance presents an incomplete and inaccurate picture.

For these reasons, I therefore decline to forward this nomination document to the National Park Service.

Very truly yours,

  
Jo-Ellen Darcy  
Assistant Secretary of the Army  
(Civil Works)