To: LuisMendez@ongov.net[]
Cc:
DavidCoburn@ongov.net;NickCapozza@ongov.net;PatriciaPastella@ongov.net;CN=Pam Tames/OU=R2/O=USEPA/C=US@EPA[];
ickCapozza@ongov.net;PatriciaPastella@ongov.net;CN=Pam Tames/OU=R2/O=USEPA/C=US@EPA[]; atriciaPastella@ongov.net;CN=Pam Tames/OU=R2/O=USEPA/C=US@EPA[]; N=Pam Tames/OU=R2/O=USEPA/C=US@EPA[]
From: CN=Lauren Charney/OU=R2/O=USEPA/C=US
Sent: Tue 11/10/2009 6:13:16 PM
Subject: Re: Ley Creek Access
Entry and Continued Access.pdf

Luis,

I will present this version of the access form to my management and let you know if it is acceptible. Please note, EPA is also seeking access for the following county-owned lots in addition to the ones listed on the access form: 001.2-02-19.0; 074.-03-03.2; 086.-02-17.0.

Thanks,

Lauren

LuisMendez@ongov.net
11/10/2009 12:14 PM
To Lauren Charney/R2/USEPA/US@EPA, DavidCoburn@ongov.net
cc PatriciaPastella@ongov.net, NickCapozza@ongov.net
Subject Re: Ley Creek Access

Lauren:

Attached for your further consideration is EPA's Consent to Access Form with revisions derived from your email of this morning. As discussed during this morning's telephone conversation, our objective is to facilitate access in a manner, that also affords County tax payers a reasonable degree of protection from claims for damages arising from mishaps. I am certain that as a public entity the EPA can appreciate this need and will not choose to construe the County's request as a denial of access. Please advise if the form as proposed to be revised is acceptable to your client.

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Charney.Lauren@epamail.epa.gov
11/10/2009 11:33 AM

To LuisMendez@ongov.net

cc
Subject Ley Creek Access

Luis,

As I mentioned in our call this morning, EPA is unable to agree to or accept the access agreement you provided. Primarily, pursuant to EPA guidance (which I have attached here for your convenience), EPA does not enter into two-party access agreements, but rather accepts one-party access consent forms.

In addition, EPA is not able to provide indemnity nor to agree to provide insurance. Under its access policy, the Agency treats the imposition of such conditions as "denials" of access (specifically, see policy section IV, paragraph A.3).

However, we may be able to provide sufficient assurance on insurance. EPA requires its contractors to maintain insurance and insurance would be required for the proposed Superfund action on the County's property as required by the applicable Federal Acquisition Regulations (FAR) and as specified in the applicable EPA contract. EPA is unable to require its contractors to add third parties (e.g. the County) as additional insureds under their liability insurance policies. EPA would be willing to ask the contractor if it would agree to provide such third party coverage to the County, but the access agreement may not be conditioned on the availability of such third party insurance.

Claims for negligence by Federal employees would be addressed by the Federal Tort Claims Act.

Please let me know if you have any questions or would like to discuss this further.

(See attached file: Entry and Continued Access.pdf)

OnondagaLake_0000897_0002