

LAFAYETTE CONSOLIDATED GOVERNMENT

INVESTIGATIVE AUDIT SERVICES

Issued August 13, 2025

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August 13, 2025

**HONORABLE MONIQUE BOULET, MAYOR-PRESIDENT
AND MEMBERS OF THE LAFAYETTE CITY AND PARISH COUNCILS**
Lafayette, Louisiana

We are providing this report for your information and use. This investigative audit was performed in accordance with Louisiana Revised Statutes 24:513, *et seq.* to determine the validity of complaints we received.

The procedures we performed primarily consisted of making inquiries and examining selected financial records and other documents and do not constitute an examination or review in accordance with generally accepted auditing or attestation standards. Consequently, we provide no attestation or other form of assurance with respect to the information upon which we were provided.

The accompanying report presents our findings and recommendations as well as management's response. This is a public report. Copies of this report have been delivered to the District Attorney for the 15th Judicial District of Louisiana, the United States Attorney for the Western District of Louisiana, and others as required by law.

Respectfully submitted,



Michael J. "Mike" Waguespack, CPA
Legislative Auditor

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EXECUTIVE SUMMARY

Unauthorized Public Spending and Permit Failures

In February 2022, the Lafayette Consolidated Government (LCG) undertook a public works project involving the removal of a spoil bank originally constructed by the U.S. Army Corps of Engineers (USACE) in the 1950s. The spoil bank was located on the St. Martin Parish side of the Vermilion River and was excavated and reconstructed on the Lafayette Parish side, allegedly for flood mitigation purposes. Our investigative audit determined that LCG executed this project without securing the required legal authority, land rights, or permits — raising significant legal, regulatory, and intergovernmental concerns. Specifically, LCG expended public funds outside of its jurisdiction without a joint service agreement or cooperative endeavor agreement, as required by its Home Rule Charter and Louisiana law; performed work on land that LCG did not fully own, without documented consent from a known co-owner; failed to obtain a local permit from St. Martin Parish Government (SMP); withdrew its federal permit application from USACE but proceeded with the project regardless. These actions potentially violated LCG's charter, an SMP ordinance, and multiple provisions of state and federal law.

BACKGROUND AND METHODOLOGY

Lafayette Consolidated Government (LCG) is governed by a Home Rule Charter. Lafayette Parish has a population of 241,753, which includes the City of Lafayette with a population of 121,374 as of the 2020 Census. Prior to January 2020, the governing authority of LCG was the Lafayette City-Parish Council, consisting of nine members from nine single-member districts. By a general vote of Lafayette citizens, effective January 6, 2020, this Council was replaced by two separate councils consisting of five members each. The Lafayette City Council (City Council) serves as the governing authority for the City of Lafayette. The Lafayette Parish Council (Parish Council) serves as the governing authority for the Parish of Lafayette. The City Council and Parish Council, jointly, serve as the governing authority for LCG. The LCG chief executive is the Mayor-President.

LCG provides a wide range of services including public safety, highways and streets, sanitation, airports, transportation, recreational activities, utilities services, fiber optic networking services, and general administrative services. The Louisiana Legislative Auditor initiated this audit to determine the validity of complaints we received regarding LCG's use of public assets and funds. The procedures performed during this audit included:

- (1) interviewing LCG employees and officials;
- (2) interviewing other persons, as appropriate;
- (3) examining selected LCG documents and records; and
- (4) reviewing applicable state and federal laws and regulations.

CLARIFYING THE RECORD IN RESPONSE TO POLITICAL ALLEGATIONS

In his 25-page written response to the Louisiana Legislative Auditor's (LLA's) draft report, former Mayor-President Joshua Guillory opens with a series of attacks, alleging political bias, misconduct, and the "weaponization" of oversight. He portrays the audit as part of a coordinated campaign against him. In the same opening paragraph, Mr. Guillory claims it took the LLA "three-and-a-half years" to review this project — yet also describes the report, which he dismisses as a "political memorandum," as "rushed." In one passage, Mr. Guillory refers to the Legislative Auditor as a "politically-appointed fixture masquerading as a watchdog," whom he describes as "little more than a hitman for the elite's [sic] intent on dragging Lafayette Parish (and our state) backwards." Yet on the very next page, he complains — but acknowledges — that the Legislative Auditor is "elected" by the House and Senate.

For five pages, Mr. Guillory levels accusations against the LLA, opening with a section titled "The Louisiana Legislative Auditor: A Century of Political Prostitution." To support his assertion, he tries to link the LLA to the administrations of former Governors Huey P. Long and Earl K. Long — both of whom left office years before the LLA began operations on July 1, 1964. On that date, the now-defunct Supervisor of Public Funds — an executive branch office that existed during both Long administrations — was abolished, and the LLA began. Mr. Guillory appears to be confusing the LLA — a legislative branch agency — with the Supervisor of Public Funds. While some powers and duties of that office were transferred to the LLA when the Supervisor of Public Funds was abolished, the two were entirely separate and distinct.

Mr. Guillory continues his attack in a section entitled "Playbook of a Paper Tiger." He begins by erroneously claiming that the LLA interfered with Lafayette Consolidated Government's (LCG's) "third-party audit" by "mandating that LCG's independent auditors submit their 2022 findings to the LLA before any review or dispute by LCG staff." In reality, the LLA maintains strong working relationships with independent CPAs performing governmental audits throughout Louisiana, and the relationship with LCG's auditor is a clear example of that.

LCG's auditor was aware that the LLA had begun an investigation into LCG's operations and offered to share their draft report to ensure it would not compromise that investigation. The LLA reviewed the draft and found nothing that affected its work. The report LCG staff ultimately received was entirely the product of the independent auditor and was free of any interference by the LLA.

This criticism reflects a broader pattern in Mr. Guillory's response: ordinary, professional, and voluntary interactions are presented as evidence of misconduct. By characterizing routine cooperation as "interference,"

the response misstates the facts and invites conclusions not supported by the record. Such mischaracterizations call into question the reliability of this, and other allegations contained in his response.

Mr. Guillory continues his attack under a section titled “Strategic Release Dates.” He states that these “debunked allegations first emerged in the heat of the 2023 election. *Coincidence?*” He does not mention that:

1. the law required LCG’s 2022 annual audit to be completed by its own independent auditor by April 30, 2023; and
2. completed audits become public records.

Simply put, the audit he references was conducted and released in accordance with legal requirements that were in place long before Mr. Guillory became a candidate for public office, not as the result of any strategic timing by the LLA.

Mr. Guillory continues his diatribe under headings such as “Leak First, Verify Never” and “Courtroom Humiliations.”

He claims the “Legislative Auditor is notorious for leaking misleading information.” As his first example, he refers to the audit report on the State of Louisiana’s financial statements that the LLA is statutorily required to perform annually. Mr. Guillory said the report alleged over \$3 billion of questionable spending across multiple state agencies and further alleged that the “timing and selective media dissemination suggested political motivation rather than impartial oversight.” He does not mention that:

1. the law required the state’s financial audit to be released by December 31, 2024; and
2. completed audits become public records.

For his only other example under “Leak First, Verify Never,” Mr. Guillory cites this investigative audit. He claims he recalls “a time when [he] met with one of the auditors and within the hour, everything discussed appeared on [a local news blog].” In fact, the only meeting the LLA representatives had with Mr. Guillory was to inform him, the city-parish attorney, and the chief administrative officer that the LLA was beginning an investigative audit. Nothing substantive about the audit was discussed at that meeting.

More importantly, Mr. Guillory was never interviewed by the LLA and he declined our offer when it was made. We contacted him to schedule an interview in accordance with our standard investigative audit procedures. He initially responded that his secretary would follow up to arrange a time. When no follow-up occurred, we sent a text message to inquire. Mr. Guillory replied:

"Once again, I have been asked to turn my attention to what I consider are false, unbiased claims and allegations wafted for political purposes. This baseless inquiry has rolled on far too long... I respect your request for another interview in person, but I do not believe it will help anyone. If you have questions of me, please send them to me in writing... I cherish not only my time but also my privacy... I am not in politics anymore, and I wish the new administration well."

We responded:

"Thanks for the response. We prefer to conduct our interviews in person. If you change your mind and decide you want to have input into what will be included in our report, please let me know. In the meantime, I will add this to our work papers."

Contrary to the implication in Mr. Guillory's statement, he was never interviewed by the LLA. His refusal to participate is part of the public record. Participation in our process is always welcomed but is not compulsory. The findings in this report stand independently of Mr. Guillory's involvement and are supported by documentary evidence, legal analysis, and interviews with public officials, technical experts, and affected stakeholders.

Under the heading titled "Courtroom Humiliations," Mr. Guillory points to a lawsuit between the LLA and the State Board of Governmental Ethics and to an ongoing defamation suit filed against the former Legislative Auditor. He characterizes this as the LLA having its wings "clipped by judges again and again." Although it is true that the LLA has been sued on a number of occasions, such cases often stem from differing interpretations of law — some of which we win and some of which we lose. None have yet resulted in damages being paid. In many instances, lawsuits against the LLA arise after an investigative audit has been performed, when the subject of the audit is attempting to keep facts from becoming public.

This report is silent on the lawsuits that LCG lost during Mr. Guillory's term in office. There was ample information available to report on, including the millions of dollars LCG paid in response to lawsuits and the legal fees paid to attorneys. However, we took the position that because the courts had already decided these matters, there was no need to address them further in this report.

FINDING AND RECOMMENDATIONS

Unauthorized Public Spending and Permit Failures

In February 2022, the Lafayette Consolidated Government (LCG) undertook a public works project involving the removal of a spoil bank^A originally constructed by the U.S. Army Corps of Engineers (USACE) in the 1950s. The spoil bank was located on the St. Martin Parish side of the Vermilion River and was excavated and reconstructed on the Lafayette Parish side, allegedly for flood mitigation purposes. Our investigative audit determined that LCG executed this project without securing the required legal authority, land rights, or permits — raising significant legal, regulatory, and intergovernmental concerns. Specifically, LCG expended public funds outside of its jurisdiction without a joint service agreement or cooperative endeavor agreement, as required by its Home Rule Charter and Louisiana law; performed work on land that LCG did not fully own, without documented consent from a known co-owner; failed to obtain a local permit from St. Martin Parish Government (SMP); withdrew its federal permit application from USACE but proceeded with the project regardless. These actions potentially violated LCG’s charter, an SMP ordinance, and multiple provisions of state and federal law.^{1,2,3}

In December 2021, LCG obtained bids for as-needed excavation and disposal services. According to LCG’s Notice to Contractors, the required work consisted of furnishing labor, equipment, and superintendence to excavation and disposal throughout the Lafayette City-Parish on an “on call, as needed” basis for the duration of one year.^B Records show that LCG received unit price bids from five contractors that ranged from \$390,050 to \$1,097,500; Rigid Constructors, LLC (Rigid) was the low bidder (\$390,050), and LCG entered into an as-needed excavation and disposal services contract with Rigid on December 29, 2021. On February 18, 2022, LCG executed Amendment No. 1 to the contract for Rigid to provide additional services related to “Spoil Bank Removal.” The contract amendment, signed by former Mayor-President Joshua Guillory (Mayor-President Guillory), included a one-page exhibit with the following bid items (Total Base Bid - \$3,699,800):

^A A spoil bank is the “bank constructed from surplus excavated earth on the side cutting parallel to the road alignment or main canal bank. In other words, when the excavated earth is not completely required for the forming of the canal bank or the road embankment. In such a case, the extra earth is deposited in the form of small banks which are known as **spoil banks**.”
<https://civilnoteppt.com/spoil-bank/>

^B Contractors were required to complete a Unit Price Form, which requested their unit prices for each service requested (e.g., prospective contractors were asked to provide a unit price, per cubic yard, for the excavation and disposal of 35,000 cubic yards of dirt). The Unit Price Form required mobilization to be included in pricing for excavation and disposal services.

- (1) Expedited Mobilization - \$1,858,000,
- (2) Tree Clearing - \$4,800,
- (3) Excavation and Fill – \$260,000,
- (4) Barges/Temporary Bridges, Cranes, and Rigging - \$1,192,000,
- (5) Ramps - \$238,000,
- (6) Mechanics (Stand-by) - \$117,000, and
- (7) Patrol Boats – \$30,000.

The contract amendment contained additional line items (e.g., expedited mobilization, barges/temporary bridges, cranes, rigging, ramps, mechanics, and patrol boats) that were not included in the bid specifications for the as-needed excavation and disposal services contract. Louisiana Revised Statute (La. R.S.) 38:2212(M)(4) requires that any change order outside the scope of the public works contract in excess of the contract limit shall be let out for public bid. The additional line items for the spoil bank project appear to have changed the scope of the original contract and should have been bid in accordance with the Louisiana Public Bid Law.

Records show that LCG issued a check in the amount of \$3,699,800 to Rigid on February 28, 2022, for "SPOIL BANK REM". Based on this information, and other LCG records, LCG paid Rigid \$3,699,800 to remove a spoil bank located on the St. Martin Parish side of the Vermilion River and reconstruct it on the Lafayette Parish side of the Vermilion River. In doing so, it appears that LCG violated the Louisiana Public Bid Law; improperly expended public funds outside of its jurisdiction; performed work on land that LCG did not fully own, without documented consent from a known co-owner; failed to obtain a local permit from SMP; obstructed a navigable waterway in possible violation of the Rivers and Harbors Act; and may have performed work within wetlands without a permit from USACE, as required by the Clean Water Act.

Rebuttal to Mr. Greg Logan's Response:

In response to our report, former LCG City-Parish Attorney Greg Logan (Mr. Logan) argued that Amendment No. 1 to the as-needed excavation and disposal contract with Rigid Constructors was lawful and fell within the scope of the original bid. He referenced an opinion written months after the spoil bank removal by LCG's retained public bid law counsel, which he concluded said the amendment was permissible. However, our interpretation differs from Mr. Logan's. On p. 11 of the 12-page opinion (the second paragraph under III. Conclusion), LCG's retained public bid law counsel says:

"However, the fact that the work was not performed in the Lafayette-City Parish[sic] strongly favors a finding that the work was outside the scope of

*the Contract. The Notice to Bidders makes clear that the work anticipated to be performed was only in Lafayette-City Parish[sic] and not other locations outside the Parish. It specifically defines the work to be performed under the Contract as 'furnishing labor, equipment, and superintendent to excavation[sic] and disposal **throughout the Lafayette City-Parish.**' (Emphasis in original.) As such, the Contract did not anticipate or contemplate work outside that parish. Despite this, the excavation work performed pursuant to the Amendment was performed in St. Martin Parish. It is important to note that the work performed in St. Martin Parish was not merely work ancillary to or supporting the main work objective. Rather, the work performed was the actual excavation work, which is the very purpose of the Contract. **As such, we conclude that the Amendment was outside the scope of the contract and should have been let for public bid prior to the award.**" (Emphasis supplied.)*

We agree with LCG's retained public bid counsel: the work in St. Martin Parish was outside the scope of the contract.

However, we also believe the amendment constituted a distinct, large-scale public works project, not a modification of ongoing incidental services. In accordance with La. R.S. 38:2212(M)(4), any change order that adds work "outside the scope" of the original public works contract and exceeds the contract limit must be separately let out for public bid. As a result, even if the work had been performed in Lafayette Parish — which it was not — it should have been competitively bid as a standalone project.

The failure to bid the spoil bank removal as a new project deprived the public and other potential contractors of the opportunity to compete, and created the appearance that the contract was structured to avoid legal procurement requirements.

Rebuttal to Mr. Guillory's Response

In his response, former Mayor-President Joshua Guillory claims the \$3.7 million amendment to Rigid Constructors' excavation contract was lawful because it involved the same general category of work ("excavation and disposal"), was driven by emergency conditions, and was supported by legislative and council approvals.

We disagree, for the same reasons articulated in our rebuttal to Mr. Logan's response. Mr. Guillory's assertions misrepresent both the legal requirements and the factual record.

LCG's original contract was advertised as an "on-call, as-needed" excavation and disposal services agreement within Lafayette Parish — not for a multimillion-dollar, out-of-parish levee-scale engineering operation. The contract amendment added a specific, large-scale project involving barges, cranes, patrol boats, rigging,

ramps, and temporary bridges — none of which were contemplated in the original bid. These items fundamentally altered the nature and scope of the contract.

This was not an extension of general services — it was a separate capital project that required its own public bid. As stated earlier, under La. R.S. 38:2212(M)(4), when a change order falls outside the scope of the original public works contract and exceeds the contract limit, it must be separately advertised and competitively bid. Mr. Guillory's invocation of emergency conditions does not override this requirement.

While LCG did declare a weather-related emergency in May 2021, the contract amendment was not executed until February 2022 — nine months later. There is no evidence of a contemporaneous emergency that justified bypassing the bid process at that time.

Furthermore, LCG did not follow the emergency procurement procedures outlined in La. R.S. 38:2212(P). That provision requires formal written certification of emergency conditions, ratification by the governing authority, and documentation supporting the urgency of immediate procurement. We found no such documentation in LCG's records.

Finally, neither legislative capital outlay funding nor LCG council budget ordinances substitute for compliance with the public bid law. State and local approval to fund a project does not waive the requirement for competitive bidding.

Public Bid Law exists to ensure transparency, fairness, and fiscal integrity. Emergency declarations and political momentum cannot be used to circumvent it.

Unauthorized Expenditure of Public Funds in St. Martin Parish

The Lafayette Consolidated Government Home Rule Charter (LCG Charter) explicitly restricts LCG's jurisdiction to Lafayette Parish and the City of Lafayette:

- **Section 1-03:** Defines the territorial boundaries of LCG.
- **Section 1-04:** Establishes that LCG consists solely of Lafayette Parish and the City of Lafayette.
- **Sections 1-05 and 1-06:** Does not grant LCG authority to do work outside the Parish of Lafayette.
- **Section 1-07:** Authorizes LCG to enter into joint services agreements or cooperative efforts with other governmental agencies and political subdivisions.

Spending public funds for work outside LCG's jurisdictional boundaries — specifically in St. Martin Parish — should not have been done without a formal joint service agreement under LCG Charter §1-07 and Louisiana Revised Statutes (La. R.S.) 33:1322, *et seq.* (the Local Services Law). That law permits

intergovernmental cooperation only when the agreement: is in writing; clearly defines the purpose, roles, funding, and authority; is approved by each entity's governing body; and is published in the official journal of the parish or municipality, in the same manner as are other proceedings of the governing body under La. R.S. 33:1325.

Our investigative audit definitively established that no formal agreement existed between LCG and SMP regarding this project. To the contrary, former SMP President Chester Cedars informed our audit team that then-LCG Mayor-President Guillory was fully aware of SMP's opposition to the removal of the spoil bank located completely within St. Martin Parish, without further studies showing it would not adversely impact St. Martin Parish's residents. According to former SMP President Cedars, Mayor-President Guillory personally assured him that no work would proceed on the project. Despite this, LCG nevertheless moved forward with the spoil bank removal operation without providing any advance notice to SMP officials and without obtaining a SMP permit, or otherwise obtaining SMP's consent, directly contradicting Mayor-President Guillory's previous statements.

Furthermore, LCG Charter §2-17 limits the use of tax revenues to services and infrastructure "provided by LCG." Article VII, §14(A) of the Louisiana Constitution prohibits the use of public funds for purposes not authorized by law. Unless an expenditure is authorized by law; serves a lawful public purpose; provides a reciprocal public benefit; and complies with the test established in *Bd. of Dirs. of the Indus. Dev. Bd. v. All Taxpayers*, 938 So. 2d 11 (La. 2006) (known as the "Cabela's test"), Article VII, §14(A) of the Louisiana Constitution is violated. Without a valid intergovernmental agreement, LCG lacked any legal authority to commit funds to a project located in another parish — even if the project was intended to benefit Lafayette Parish residents.

Rebuttal to Mr. Logan's Response

In his response to our report, Mr. Logan stated that LCG had authority to act in St. Martin Parish under La. R.S. 33:4621 and the general powers provisions of the LCG Charter. He further asserted that an intergovernmental agreement with SMP was not required to proceed with the spoil bank project.

Although we agree that LCG could lawfully acquire property in St. Martin Parish, we disagree that LCG was empowered to perform work there without SMP's consent. While La. R.S. 33:4621 allows LCG to acquire property outside its territorial boundaries, that statute does not, in and of itself, grant authority to perform work outside those boundaries. Mr. Logan contends that the laws we cite are permissive rather than mandatory, and therefore inapplicable.

His argument overlooks the fact that, because parishes do not have independent authority to perform work in other parishes, the law allows—though does not require—parishes to enter into agreements permitting such work. In this case, the former SMP President expressed serious concern about the impact of spoil bank removal on his parish's residents. He wanted a study showing that the project

would not cause harm before agreeing to proceed. LCG acted before that determination could be made, underscoring why SMP did not consent to the project.

Moreover, LCG Charter §1-07 authorizes joint services agreements but does not independently grant authority to act outside Lafayette Parish. That authority must be exercised in compliance with Louisiana law, including the Local Services Law (La. R.S. 33:1321–1331). La. R.S. 33:1325 provides:

"All arrangements concluded under the authority of R.S. 33:1324 shall be reduced to writing. For this purpose it shall suffice for each party to the agreement, acting through its governing body, to accept the agreement by the passage of an ordinance or resolution setting out the terms of the agreement. The agreement, ordinance, or resolution shall be published in the official journal of the parish or municipality, in the same manner as are the other proceedings of the governing body."

Had LCG complied with the Local Services Law—as anticipated by LCG Charter §1-07—La. R.S. 33:1330 would have applied:

"The police power of parishes and municipalities shall extend to any property acquired by them under the provisions of this Part [La. R.S. 33:1321, et seq.]."

Because LCG did not acquire the property in accordance with La. R.S. 33:1321, *et seq.*, it lacked lawful authority to perform any work that could affect existing drainage in St. Martin Parish.

Rebuttal to Mr. Guillory's Response

In his response, Mr. Guillory repeatedly asserts that the spoil bank removal project was lawfully executed because it was supported and funded by the Louisiana Legislature, the State Bond Commission, and the Lafayette City Council. He lists multiple votes approving HB2 and capital outlay items, suggesting these actions authorized not only the project itself, but also its execution without further local, federal, or intergovernmental approvals.

That is incorrect. Legislative appropriations and Bond Commission approval authorize funding for a project; they do not override or excuse noncompliance with other laws governing how the project must be implemented. Specifically:

- **Appropriations do not convey land rights.** Even if the Legislature allocates and the Bond Commission approves funds for a drainage improvement, the local government must still obtain valid title or consent for any private or co-owned land involved.
- **Appropriations do not substitute for permits.** Funding approval does not waive local ordinances, state bid laws, federal environmental

laws, or the requirement to obtain USACE permits under the Clean Water Act and Rivers and Harbors Act.

- **Appropriations do not override jurisdictional limits.** LCG's Home Rule Charter and Louisiana law still require a joint service agreement or intergovernmental contract before conducting public works in another parish. No such agreement was ever executed with SMP.

The Louisiana Constitution and jurisprudence are clear: a project may be publicly funded and still be unlawfully implemented if it fails to comply with land use, environmental, or jurisdictional requirements.

Finally, Mr. Guillory is incorrect in claiming the LLA should have directed its audit findings toward the Legislature or Bond Commission. These bodies authorize capital investments but do not administer projects. The responsibility for lawful execution rests squarely with the local governing authority — in this case, LCG. In short, funding approvals are not equivalent to legal compliance. Public dollars must be spent lawfully, transparently, and within the bounds of regulatory oversight — regardless of the political support behind them.

Lack of Property Ownership and Consent

The spoil bank was located on a tract of land in St. Martin Parish in which LCG held only a two-thirds undivided ownership interest. Public land records confirm that LCG was not the sole owner, and no documentation was provided showing that the remaining co-owner consented to the project. When interviewed, the private co-owner stated that LCG did not approach him to purchase his land, and he opposed the project because removal of the "levee" would inundate the land in St. Martin Parish with water, but LCG proceeded regardless.

Under Louisiana Civil Code Article 804, a co-owner may not make substantial alterations to property held in indivision without the consent of all co-owners. Critically, LCG's former legal counsel acknowledged in interviews that he was fully aware:

- LCG did not own the full property;
- The co-owner had not granted consent; and
- Proceeding could carry legal and financial risk.

Nonetheless, he stated that he knew what it would cost, suggesting the decision to proceed was made despite known legal deficiencies — effectively treating the risk of litigation and payout as a cost of doing business.

The co-owner filed a civil lawsuit against LCG, which was settled by the current administration. In the end, LCG paid approximately three times the property's fair market value, a transaction that raises significant concerns about valuation practices, fiduciary responsibility, and the stewardship of public funds.

Notably, even if LCG had secured a USACE permit (which it did not), it would not have resolved its legal position. USACE permits consistently include the following standard clause: "This permit does not convey any property rights or exclusive privileges, nor does it authorize any injury to property or invasion of rights of others." Consequently, such a permit would not have granted LCG legal authority to appropriate the third landowner's property without obtaining proper consent. The USACE permitting process is intended to ensure environmental compliance, not to override established property rights or to serve as a substitute for the legal acquisition of land.

Rebuttal to Responses of Mr. Logan and Mr. Guillory

In response to our report, Mr. Logan acknowledged that LCG did not hold full ownership of the property where the spoil bank was located, although he claims he was unaware of that fact at the time the work was performed. However, on p. 8 of his 31-page response (not including attachments), he stated:

*"The Revised Spoil Bank Project pared down the scope of the Original Spoil Bank Project. Additionally, it was determined that the work now would be completed in two phases. Phase 1 of the Revised Spoil Bank Project would be the reduction of the height of the spoil bank **on the property that Lafayette Parish purchased a majority interest in St. Martin Parish.**" (Emphasis added.)*

This statement demonstrates that LCG's decision-makers were aware they did not fully own the property well before work began.

Concerning our assertion that LCG paid approximately three times the property's fair market value, Mr. Logan says relying on the payment is inconsistent with the facts. He lays responsibility for the overpayment at the feet of the appraiser who LCG sued for malpractice. According to Mr. Logan, the suit was dismissed by the current administration prior to judicial resolution. Our review of the public records suggests this is incorrect for several reasons:

- LCG lost its suit against the appraiser on a peremptory exception of prescription according to the Judgment and Reasons for Ruling, dated October 3, 2023, because it filed suit more than one year after LCG acquired or should have acquired knowledge of the alleged malpractice.
- This was three months before Mayor-President Monique Boulet was sworn in on January 3, 2024.

This means there was judicial resolution, not dismissal, during the Guillory administration, not the Boulet administration.

Moreover, even if LCG did not own the entirety of the property, Mr. Logan contends that LCG's two-thirds undivided interest permitted the work to proceed,

arguing that the improvements benefited the property and were supported by some family members.

Mr. Guillory also asserted that LCG's two-thirds undivided interest allowed the spoil bank removal without obtaining the remaining co-owner's consent. He cited general co-ownership provisions of the Louisiana Civil Code (La. C.C. arts. 797–818) to suggest that majority control was sufficient. He also referenced the *Caffery* case.

We disagree with both Mr. Logan and Mr. Guillory's interpretations.

Article 804 of the Louisiana Civil Code is explicit:

"Substantial alterations to property held in indivision may not be made without the consent of all co-owners."

The excavation and removal of approximately 1,000–1,200 feet of the elevated spoil bank, along with standing timber, constituted a substantial alteration by any legal or factual standard. It permanently changed the condition and use of the property—well beyond ordinary management or maintenance.

The law does not carve out exceptions for perceived public benefits, partial support from former co-owners, or intended flood relief. Moreover, the one remaining co-owner explicitly opposed the project and says he was never contacted for consent. Proceeding in the face of direct opposition from a co-owner directly contravenes Article 804 and has no basis in relevant case law.

The *Caffery* case cited by Mr. Guillory dealt with a servitude that did not materially alter the property. This matter involved irreversible excavation work that restructured the land and led to litigation. LCG ultimately paid approximately three times the fair market value of the property to settle that dispute.

La. C.C. arts. 496 and 497 — referenced by Mr. Logan — govern compensation for improvements after a dispute has occurred. They are remedial, not permissive, and cannot be used to justify bypassing the requirement of unanimous consent before work begins.

In sum, consent from all co-owners was legally required and clearly lacking. LCG's decision to proceed without it violated Louisiana co-ownership law and exposed the public to avoidable legal and financial liability.

Additional Rebuttal to Mr. Logan's Claim Regarding No Approval Role

In his response, Mr. Logan asserts that neither he nor the Director of Public Works approved the decision to move forward with the spoil bank removal project. Instead, he attributes the decision to the Mayor-President's former Chief of Staff.

The former Chief of Staff, who had been on the job for seven weeks at the time, recalls events differently. He told us at the time he was still learning names and was in no position to lead a project that was planned before he arrived. He also told us the Mayor-President gave the spoil bank removal project a codename — Apollo — because, according to the Mayor-President, it was “very secretive.” The former Chief of Staff said that to the best of his knowledge, only a handful of people at LCG knew about the project. There was concern that the SMP president would get an injunction if he discovered the project was about to begin.

This likely explains why Amendment No. 1 to the as-needed excavation contract, which allowed the contractor to remove the spoil bank was not signed until Friday, February 18, 2022 — a mere three days before the removal work began. Interestingly, equipment had already been mobilized (“expedited mobilization” made up \$1,858,000 of the cost of Amendment No. 1) and was already standing by and ready to go days before Amendment No. 1 was signed.

It also sheds light on the fact that the two-thirds interest in the property where the spoil bank was located was not purchased from the other co-owners until February 21, 2022 — the day the project began — and was not recorded in the St. Martin Parish Clerk of Court’s conveyance records until March 9, 2022.

The former Chief of Staff provided a screenshot of a message showing that at 2:37 PM on Friday, February 18, 2022— three days before the spoil bank removal was to begin — he texted the former Mayor-President (see image at right):

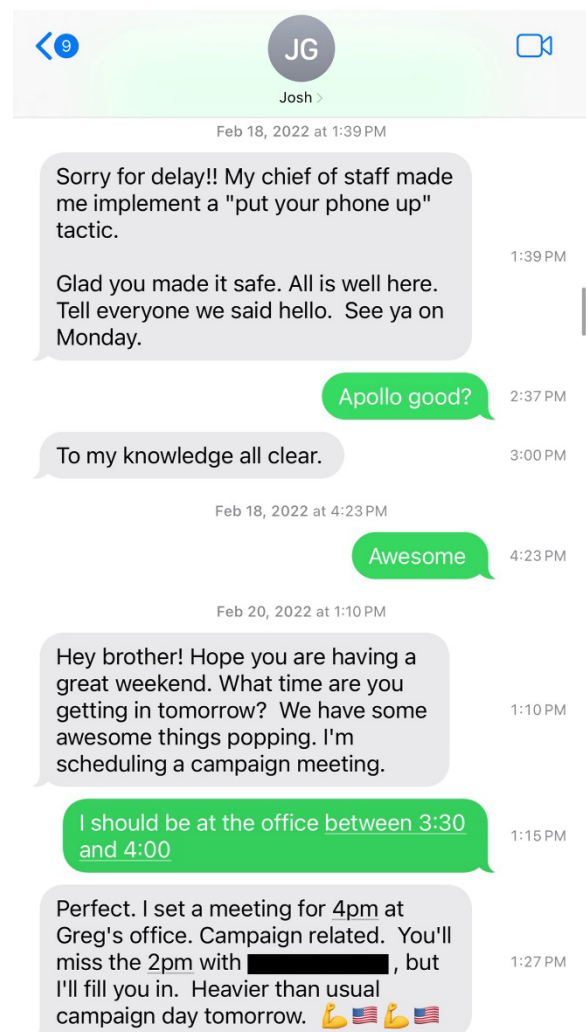
“Apollo good?”

At 3:00 PM, the former Mayor-President responded:

“To my knowledge all clear.”

The former Chief of Staff also provided a screenshot of texts from Sunday, February 20, 2022, the day before work began. At 1:10 PM, the former Mayor-President texted:

“Hey brother! Hope you are having a great weekend. What time are you getting in tomorrow? We have some awesome things popping. I’m scheduling a campaign meeting.”



At 1:15 PM, the former Chief of Staff replied:

"I should be in the office between 3:30 and 4:00."

The former Chief of Staff told us this was not his normal reporting time — he anticipated working into the night because the Apollo project was starting that evening.

At 1:27 PM, the former Mayor-President responded:

"Perfect! I set a meeting for 4pm at Greg's office. Campaign related. You'll miss the 2pm with XXXXXXXX, but I'll fill you in. Heavier than usual campaign day tomorrow."

The message concluded with four emojis: two arms flexing biceps, with clinched fists, and two American flags.

The former Chief of Staff stated that on Monday, February 21, 2022 — the day the spoil bank removal began — the contractor told him he would not begin work without approval from the Mayor-President.

To obtain that approval, the former Chief of Staff said he interrupted a meeting between the Mayor-President, Greg Logan and at least one other person just before 5:00 PM and told them the contractor was asking if the project was cleared to proceed.

According to the former Chief of Staff, both Mr. Logan and the Mayor-President verbally gave their approval for the contractor to move forward.

Within minutes, at 5:01 PM, the former Chief of Staff emailed the contractor:

"Consider this email as a Notice to Proceed with the Vermillion Water Control Project." Mr. Logan, LCG's Director of Public Works, and LCG's Chief Administrative Officer were copied on the email (as shown below).

Gregory Logan

From: Michael Hicks <mhicks@LafayetteLA.gov>
Sent: Monday, February 21, 2022 5:01 PM
To: Cody Fortier
Cc: Chad Nepveaux; Cydra Wingerter; Gregory Logan
Subject: Notice to Proceed

Mr. Fortier

Consider this email as a Notice to Proceed with the Vermillion Water Control Project.

Please contact Mr. Nepveaux with concerns.

Respectfully,

Mike Hicks
Chief of Staff, Lafayette Consolidated Government

At 8:05 PM on February 21, 2022, the former Chief of Staff — onsite at the spoil bank — texted the former Mayor-President a video of work underway with the message (see image at right):

"Getting after it."

The former Mayor-President replied:

"Helping people!" followed by an arm flexing its bicep with its fist clinched and an American flag.

Thus, it appears Mr. Logan's claim that he had no role in approving the spoil bank removal is contradicted by the Chief of Staff's account, the February 20 text referencing a "meeting at Greg's office" hours before work began, and the Chief of Staff's statement that he personally obtained verbal approval from both Mr. Logan and the Mayor-President immediately prior to sending the Notice to Proceed.

While Mr. Logan argues the 5:01 PM email was "after hours" and therefore too late for him to act, the evidence indicates he was physically present in the Mayor-President's conference room and was asked directly — minutes before the Notice to Proceed was sent — whether the contractor should begin work. His approval in that moment, if accurately described, undermines his claim of having no involvement.

Violation of St. Martin Parish Ordinance

A SMP ordinance⁴ requires any development involving the construction, alteration, or removal of any levee or levee system as defined in this chapter, including, but not limited to, Section 14-2, must obtain a permit issued and approved by the floodplain administrator and specifically approved by majority vote of the SMP Council.^c LCG failed to obtain this required permit, thereby violating SMP's ordinance and depriving SMP of its lawful authority to evaluate the project's potential environmental and infrastructural impacts.

^c **Code of Ordinances for St. Martin Parish, Louisiana, Section 14-2 Definitions.** *Levee* means a manmade structure of any nature, earthen or otherwise, along any water body that contains, controls, diverts, detains, retains, or which aids in the containment, control, or diversion of the flow of water on or across any real estate.



When questioned, LCG's former legal counsel asserted that the ordinance was unconstitutional. However:

- No court had declared the ordinance invalid; and
- Under Louisiana law, ordinances are presumed valid, and the party challenging its constitutionality bears the burden of proof.^D

LCG lacked authority to disregard a valid local law based solely on its own legal interpretation. If LCG believed the ordinance was unconstitutional, the appropriate course of action would have been to seek a declaratory judgment or judicial review — neither of which occurred.

Rebuttal to Mr. Logan's Response

Mr. Logan contends that Ordinance No. 21-07-1327 — specifically §§14-2 and 14-71 — was procedurally defective, unconstitutionally vague, violative of the dormant Commerce Clause, and inapplicable because the spoil bank was not a "levee."

We disagree.

The SMP Council duly adopted Ordinance No. 21-07-1327, and it was properly published in the parish's official journal. Under Louisiana law, duly enacted ordinances are **presumed valid** until a court declares otherwise. No such declaration exists here. The exclusive lawful method for challenging an ordinance's validity is through judicial review. LCG never sought such review and therefore had no legal authority to disregard the ordinance based solely on its own interpretation.

Mr. Logan's claim that the spoil bank was not a "levee" ignores the ordinance's plain language. Section 14-2 defines a levee as:

"a manmade structure of any nature... that contains, controls, diverts, detains, retains, or aids in the containment, control, or diversion of the flow of water."

By any reasonable reading, the elevated spoil bank functioned to slow, divert, or retain floodwaters. Whether or not it was originally engineered as a levee is irrelevant to the ordinance's definition.

His vagueness and Commerce Clause arguments are likewise misplaced. Section 14-71 applies to developments involving water-related structures and is neither vague nor overly broad when read in its entirety. It is a land-use and flood-control measure — well within the police powers of a parish government. It imposes no burden on interstate commerce; rather, it addresses purely local hydrological and environmental concerns.

^D Morton v. Jefferson Parish Council, 419 So.2d 431 (La. 1982); Folsom Road Civic Association v. Parish of St. Tammany, 407 So.2d 1219, 1222 (La. 1981).

Finally, Mr. Logan's suggestion that the ordinance would sweep in trivial matters such as "piles of mulch" or "sandbags" is an overstatement. The ordinance targets **permanent or semi-permanent structures** near waterways — like the sizeable spoil bank at issue here — not incidental or temporary landscaping.

The ordinance applied squarely to the spoil bank removal project. LCG's decision to proceed without the required permit was a direct violation of local law and deprived SMP of its lawful authority to assess the project's environmental and infrastructural impacts.

Failure to Obtain Required Federal Permit

Section 404 of the Clean Water Act (33 U.S.C. § 1344, *et seq.*) requires authorization from the USACE for the discharge of dredged or fill material into all waters of the United States, including wetlands. LCG submitted a Section 404 permit application under the Clean Water Act in connection with the spoil bank project, which included the following language:

The proposed project will involve temporary and permanent clearing and filling of wetlands and non-wetland Waters of the US for the removal of existing upland spoil banks.... Discharge from the proposed project will occur within wetlands and non-wetland Waters of the US. The nearest receiving waters to the project are the Vermilion River and Bayou Tortue Swamp, adjacent to the project areas.

However, LCG later withdrew the permit application before USACE completed its evaluation. USACE subsequently issued a formal written notice to LCG Public Works Director Chad Nepveaux, stating that a new application would be required if the project were to proceed. LCG did not reapply and moved forward with spoil bank removal without federal authorization.

During the audit, Mr. Nepveaux stated he did not recall receiving the letter. He explained that LCG withdrew the permit application because it was not expected to be approved. According to Mr. Nepveaux, once Mayor-President Guillory found out that the permit would likely be denied, he decided that LCG would instead purchase the property (located in St. Martin Parish) and proceed with the removal of the spoil bank material.

According to an attorney representing LCG, "[LCG] advised the contractors that all work on the St. Martin Parish side was to be done in limited upland areas so that this project did not affect any wetlands or navigable waters and thus would not fall within the jurisdiction of the USACE." We called the primary contractor's then-owner and left messages, but our calls were not returned.

We spoke with Mr. Brad Guarisco, then Deputy Chief of Regulatory Division at U.S. Army Corps of Engineers about LCG's permit application for the spoil bank project. He told us that removal of a spoil bank along the Vermilion River would have required a USACE permit under the Clean Water Act, as the activity involved

reshaping the bank and redistributing fill material into adjacent wetlands. Additionally, according to reports, three barges were positioned across the Vermilion River to connect the opposite banks of the river to complete the project. This method raised two significant environmental concerns:

- (1) It disturbed the wetland ecosystems along the riverbanks; and
- (2) It obstructed a navigable waterway – namely, the Vermilion River -- which is classified as a navigable waterway under both state and federal law.

According to USACE, LCG's actions likely constituted unauthorized activity under:

- 33 U.S.C. § 1344 (Clean Water Act – Section 404); and
- 33 U.S.C. § 409 (Rivers and Harbors Act – Section 10).

LCG's failure to comply with these requirements not only undermined federal environmental protections, but also exposed LCG to potential legal liability and reputational harm.

Rebuttal to Mr. Logan's Response

Mr. Logan argues that no federal permits were necessary because work was limited to uplands and avoided wetlands or navigable waters. He states in his response that months after the project, USACE's Chief of the Jurisdiction and Enforcement Branch observed "a genuine effort to avoid all wetlands."

However, Mr. Logan's own account confirms that USACE's site inspection revealed:

- Equipment had traversed wetlands; and
- Spoil and woody debris were present in wetland areas.

Under Section 404 of the Clean Water Act (33 U.S.C. §1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. §403 and §409), any discharge of dredged or fill material into wetlands or navigable waters — even incidental — requires prior USACE authorization. The threshold is not whether harm was intended, but whether it occurred or could reasonably be expected to occur.

Further, photographic evidence from the project shows that barges used to bridge the Vermilion River were longer than the river's width. To turn them around, operators pulled them up the riverbank. Even with round poles to minimize damage, the underside of the barge was visibly sliding down the bank — an action almost certain to cause sediment and soil to enter the river. Such sediment movement is treated as a discharge under USACE regulations, again requiring a permit.

LCG's own withdrawn Section 404 application explicitly acknowledged that the project would "involve temporary and permanent clearing and filling of wetlands and non-wetland Waters of the US" and that discharge would occur in areas adjacent to the Vermilion River and Bayou Tortue Swamp. USACE subsequently informed LCG in writing that a new permit application would be required before work could proceed. LCG withdrew the application upon learning approval was unlikely, then proceeded with the project anyway.

In short, the facts — including Mr. Logan's own admissions and photographic evidence — demonstrate that wetland impacts and riverbank discharges occurred. USACE regulations make clear that even limited disturbance triggers the need for federal permits. LCG had notice of these requirements, began the permit process, then willfully circumvented it.

Rebuttal to Mr. Guillory's Response

In his response, Mr. Guillory asserts that the spoil bank removal project required no federal permit because the final work was limited to uplands and avoided jurisdictional wetlands and navigable waters. He claims the redesign mooted the permit and that the U.S. Army Corps of Engineers (USACE) had no authority over the project.

However, the record and federal law directly contradict these assertions.

LCG's own withdrawn Section 404 application stated that the project would involve "temporary and permanent clearing and filling of wetlands and non-wetland Waters of the US." It further disclosed that discharge would occur adjacent to the Vermilion River and Bayou Tortue Swamp — both federally-regulated waterways. This application was not filed pro forma; it was filed because LCG recognized federal jurisdiction at the time.

Mr. Guillory contends that the old Section 404 application was of no concern because LCG changed the project so no permit would be required. According to Mr. Logan's response, SMP filed an objection to the permit with the USACE, but did not make Lafayette Parish aware of its objection to the permit. Mr. Logan said that when "it became clear the [the former SMP president] was operating in bad faith, Lafayette Parish was not obligated to wait for [the former SMP president] come up with some legal theory to tie this flood prevention effort up in a lengthy legal battle and further delay its completion."

We spoke with Mr. Guarisco, then Deputy Chief of Regulatory Division at U.S. Army Corps of Engineers. He had direct knowledge of the application and confirmed that the spoil bank removal, barge crossings, and redistribution of material would have required a permit under both the Clean Water Act (33 U.S.C. §1344) and the Rivers and Harbors Act (33 U.S.C. §409). The redesign Mr. Guillory references was never re-submitted to the USACE for verification. LCG unilaterally withdrew the application after being advised it would likely be denied and proceeded without further engagement.

Notably, months after the work, USACE's Chief of the Jurisdiction and Enforcement Branch visited the site and — according to Mr. Logan — acknowledged that some effort had been made to avoid wetlands. Yet the same inspection revealed that heavy equipment had traversed wetlands and that spoil and woody debris were present in wetland areas. Even limited wetland disturbance triggers federal permitting requirements under Section 404.

In addition, photographic evidence shows that barges used to span the Vermilion River were longer than the river was wide. To turn them, crews pulled the barges up the riverbank. Despite using round poles to reduce damage, the underside of the barges was visibly sliding down the bank—an action almost certain to cause sediment to enter the river. Such sediment movement constitutes a “discharge” into navigable waters under long-established USACE policy, triggering Section 10 jurisdiction.

Importantly, Regulatory Guidance Letter 07-02—cited by Mr. Guillory—does not exempt activities that disturb jurisdictional wetlands or obstruct navigable waters. The Clean Water Act and Rivers and Harbors Act do not permit self-determined exemptions based on an applicant's intent or a redesign. Federal agencies—not local officials—determine jurisdiction and permitting requirements. LCG's decision to proceed after being told a permit would be necessary reflects a disregard for that process, not compliance with it.

Pattern of Avoiding Oversight

The secrecy surrounding the spoil bank removal project — internally codenamed “**Apollo**” by Mayor-President Guillory — reinforces the conclusion that LCG acted with the intent to avoid public scrutiny and regulatory intervention. According to the former Chief of Staff, who had been in the position for only seven weeks, the project was treated as “very secretive,” with only a handful of LCG officials aware of its existence. He stated there was concern that the SMP President would seek an injunction if he learned the work was imminent. This intent is evident in the timeline:

- **Before February 18, 2022:** Heavy equipment was mobilized and staged near the site, ready to begin work. Although mobilization occurred before formal authorization, the \$1,858,000 “expedited mobilization” charge was later folded into Amendment No. 1 to the as-needed excavation and disposal services contract rather than invoiced when the mobilization actually took place.
- **February 18, 2022 (Friday):** Amendment No. 1 was signed — authorizing spoil bank removal — only three days before the project began.
- **February 21, 2022 (Monday):** LCG purchased the two-thirds interest in the property from the remaining co-owners — the same day spoil bank removal began.

- **March 9, 2022:** The property transaction was recorded in the St. Martin Parish Clerk of Court's conveyance records.

The project's execution also included activities almost certain to trigger federal permitting requirements. Photographic evidence shows the barges used to bridge the Vermilion River were longer than the river was wide. To turn these barges around, crews had to pull them out of the river, sliding them down the riverbank despite using round poles to minimize damage. From the image, it appears the underside of the barge scraped soil into the river — a discharge into navigable waters squarely within USACE jurisdiction under the Clean Water Act and Rivers and Harbors Act.

Conflicting Accounts

Mr. Logan has claimed that he did not learn of key project developments until after hours on the day of certain notifications and that his role in the project's execution was limited. However, the former Chief of Staff's account — and the project timeline — suggest otherwise. Equipment was already mobilized days before Amendment No. 1 was signed, and barges were in position at the river. Given that the project was internally codenamed, and only "a handful" of officials knew the details, it is implausible that LCG's chief legal officer would have been unaware of activities of this scale and cost.

Moreover, Mr. Logan's own statement that he later met on-site with the USACE Chief of the Jurisdiction and Enforcement Branch and observed spoil and woody debris in wetlands indicates direct knowledge of regulated impacts — knowledge inconsistent with his claim that work was confined to non-jurisdictional uplands.

When considered alongside the rapid mobilization, unrecorded property purchase until after work began, and avoidance of both federal and parish permitting processes, the evidence supports a consistent pattern: **LCG deliberately structured "Apollo" to proceed as quickly and quietly as possible, minimizing opportunities for regulatory review or legal challenge, even when it meant disregarding federal law.**

Conclusion

LCG executed a public works project outside of its jurisdiction, on land it did not fully own, without obtaining the required local and federal permits, and in potential violation of multiple provisions of state and federal law. The decision to proceed — despite lacking legal authority, co-owner consent, and permit approval — reflects a breakdown in regulatory compliance, internal oversight, and respect for intergovernmental coordination. LCG's knowingly assumption of legal risk, followed by its decision to pay significantly above market value for the land where the spoil bank was originally located, underscores serious deficiencies in public accountability, legal judgment, and financial stewardship.

Recommendations

We recommend that LCG:

- (1) Implement Jurisdictional Review Procedures**
Require formal verification of legal authority and jurisdiction before initiating or approving any public works projects, particularly those involving out-of-parish activity.
- (2) Mandate Permit Compliance Documentation**
Develop and enforce a pre-construction compliance checklist to ensure all required federal, state, and local permits are obtained, documented, and approved prior to the commencement of any project.
- (3) Strengthen Property Acquisition Controls**
Prohibit work on any property, unless LCG holds clear title or obtained documented, written consent from all co-owners, or legally-authorized representatives.
- (4) Enforce Intergovernmental Agreement Protocols**
Prohibit cross-jurisdictional expenditures or operations unless supported by valid joint service or cooperative endeavor agreements compliant with La. R.S. 33:1324–1331 and LCG Charter §1-07.
- (5) Establish Legal Risk Review Process**
Require formal written legal opinions and documented risk assessments for any project involving disputed property rights, regulatory uncertainty, or jurisdictional ambiguity.
- (6) Conduct Staff Training on Legal Boundaries**
Provide targeted training to all relevant personnel — including Public Works, Legal, and Procurement staff — on the scope of LCG's legal authority, permit requirements, and intergovernmental responsibilities.

LEGAL PROVISIONS

¹ **La. R.S. 42:1461(A)** states, "Officials, whether elected or appointed and whether compensated or not, and employees of any "public entity", which, for purposes of this Section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation to not misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed."

² **33 U.S.C. §1344(a)** states, "The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection."

33 U.S.C. §1344(f)(2) states, "Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section."

³ **33 U.S.C. §409** states, "It shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft; or to sink, or permit or cause to be sunk, vessels or other craft in navigable channels; or to float loose timber and logs, or to float what is known as "sack rafts of timber and logs" in streams or channels actually navigated by steamboats in such manner as to obstruct, impede, or endanger navigation. And whenever a vessel, raft or other craft is wrecked and sunk in a navigable channel, it shall be the duty of the owner, lessee, or operator of such sunken craft to immediately mark it with a buoy or beacon during the day and, unless otherwise granted a waiver by the Commandant of the Coast Guard, a light at night, and to maintain such marks until the sunken craft is removed or abandoned, and the neglect or failure of the said owner, lessee, or operator so to do shall be unlawful; and it shall be the duty of the owner, lessee, or operator of such sunken craft to commence the immediate removal of the same, and prosecute such removal diligently, and failure to do so shall be considered as an abandonment of such craft, and subject the same to removal by the United States as provided for in sections 411 to 416, 418, and 502 of this title. The Commandant of the Coast Guard may waive the requirement to mark a wrecked vessel, raft, or other craft with a light at night if the Commandant determines that placing a light would be impractical and granting such a waiver would not create an undue hazard to navigation."

⁴ **Code of Ordinances for St. Martin Parish, Louisiana, Section 14-71 (A) Council Approval of Developments** states, "Any development which includes the construction, alteration, or removal of any sort of levee or levee system as defined in this Chapter, including but not limited to Section 14-2, shall require a permit issued and approved by the floodplain administrator and specifically approved by majority vote of the St. Martin Parish Council. Upon request of the floodplain administrator or Parish President, the request for such a permit shall be accompanied by an engineering study which details the impact of the said development inclusive of hydrological and hydraulic analysis. In those instances where the development includes the removal of a levee or levee system, the original purpose for the construction of the said levee or levee system shall be irrelevant."

APPENDIX A

Management's Response



Patrick S. Ottinger
City-Parish Attorney

July 8, 2025

Michael J. "Mike" Waguespack, CPA
Louisiana Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Re: Response of Lafayette Consolidated Government
("LCG") to Draft Investigative Audit Report of
Louisiana Legislative Auditor dated June 17, 2025
(the "Draft Report")

Dear Mr. Waguespack:

On behalf of LCG, I sincerely thank you for the opportunity to meet with Mr. Roger W. Harris, Executive Counsel and Assistant Legislative Auditor for Investigations, and Mr. Greg Clapinski, Senior Manager of Investigative Auditing Services, on June 17, 2025, to discuss the referenced Draft Report. That document sets forth preliminary findings in reference to certain activities which occurred in February of 2022 in relation to the "removal of a spoil bank originally constructed by the U. S. Army Corps of Engineers (USACE) in the 1950s." LCG certainly considers it to be very beneficial to receive the views, insights and explanations of the Louisiana Legislative Auditor pertaining to the circumstances involved in that 2022 event. Although certainly discernable from the Draft Report, LCG reiterates that events and circumstances which comprise the subject matter of the Draft Report preceded in time LCG's current administration which took office in January 2024.

At the outset, I also express my appreciation for providing additional time to respond to the Draft Report. LCG is currently involved in the preparation of its annual budget which will be submitted to the Parish and City Councils on Tuesday, July 15, 2025. Thus, relevant personnel are engaged in the preparation of the proposed FY 2025-26 budget for LCG.

We have carefully reviewed the Draft Report and do not find that anything contained therein has been in any manner misstated as pertains to any material fact of which we are aware, after appropriate investigation or inquiry, or review of pertinent documents. As no one in the current administration was privy to any conversations or discussion noted in the Draft Report, our understanding of the relevant facts is principally based on a review of such documents as are available to us.

Finally, and as was explained in our recent meeting, LCG is party to a lawsuit filed by the St. Martin Parish Government over the matters discussed in the Draft Report, which lawsuit is still pending.¹ Although we believe this response is both complete and accurate, the pendency of this suit restricts somewhat the ability of LCG to more fully respond to the matters covered in the Draft Report.²

Subject to the foregoing, I respectfully offer the following responses to each of the sections of the Draft Report, as follows:

Unauthorized Public Spending and Permit Failures

We have carefully reviewed the discussion on Pages 2 and 3 of the Draft Report that summarizes the actions taken by the prior administration in reference to the contractual matters pertinent to the spoil bank in St. Martin Parish. We agree with that recitation with the further observation that the “as needed excavation and disposal services contract” was, as stated in the Draft Report, “for the duration of one year,” but such contract also contained an option to renew for two (2) additional one-year periods upon mutual agreement of the parties.

Also, the prior administration obtained a legal opinion for the purpose of responding to certain exceptions raised by the auditors of LCG in which it was concluded that “the fact that the work was not performed in the Lafayette-City Parish strongly favors a finding that the work was outside the scope of the Contract.”

Unauthorized Expenditure of Public Funds in St. Martin Parish

LCG does not take exception in any respect with the legal authorities provided in reference to this finding. Obviously, no current member of the LCG administration was privy to the telephone calls or other communications referenced on Page 4 of the Draft Report.

In addition to the authorities noted therein, it is our belief that the ordinances on which the former administration relied did not expressly authorize any work *outside* of Lafayette Parish. I attach Ordinance Nos. CO-062-2021, and JO-080-2020 which clearly intimate—if not explicitly state—that the projects envisioned thereby are to be conducted “in the parish [of Lafayette].”

Illustrative of this, the two (2) instruments whereby the City of Lafayette (N.B.: Not the Parish of Lafayette) acquired the two-third (2/3) interest in the 41-acre tract in St. Martin Parish initially cited a single ordinance as authority for the acquisition, thusly:

¹ *St. Martin Parish Government v. Lafayette City-Parish Consolidated Government*, Civil Suit No. 91813, 16th Judicial District Court, St. Martin Parish, Louisiana.

² We take cognizance of the fact that the Louisiana Public Records Law “shall not apply . . . [to] any records, writings, accounts, letters, letter books, photographs, or copies or memoranda thereof in the custody or control of the legislative auditor, unless otherwise provided.” La. R.S. 44:4(6)(a). The undersigned is unaware of any “other” provision that would make this letter discoverable by any third person.

CITY OF LAFAYETTE, a political subdivision of the State of Louisiana, whose mailing address is P. O. Box 4017-C, Lafayette, LA 70502, being represented herein by its duly authorized representative, Joshua S. Guillory, its Mayor-President, pursuant to City Ordinance CO-062-2021 of the Lafayette City Council, hereinafter referred to as the “PURCHASER”

Section 2-11A(12) of the LCG Home Rule Charter requires an ordinance in order to “acquire real property.” A review of the cited City Ordinance reveals no statement of approval by the City Council for the acquisition of any land (wherever located).

This appearance clause of the deeds of acquisition was later amended to be replaced by the following, to-wit:

CITY OF LAFAYETTE, a political subdivision of the State of Louisiana, whose mailing address is P.O. Box 4017-C, Lafayette, LA 70502, being represented herein by its duly authorized representative, Joshua S. Guillory, its Mayor-President, pursuant to City Ordinance CO-062-2021 of the Lafayette City Council and Joint Ordinance JO-080-2020 by the Lafayette City Council and the Lafayette Parish Council, hereinafter referred to as the “PURCHASER”.

Noting that this amended appearance clause adds another ordinance, Ordinance No. JO-080-2020 adopted by the City and Parish Councils—as supposed authority for this purchase—one observes that such ordinance authorizes the acquisition of land (albeit not by way of a distinct legal description) by either amicable means (a negotiated purchase of land) or by expropriation, thusly:

SECTION 2: The Lafayette Mayor-President is hereby authorized to acquire such land, immovable property, rights-of-way, servitudes, or other property rights as are determined to be necessary under good engineering standards to provide for the design and construction of said Project; and he is authorized to do so on an amicable basis or by the proper use of the power of expropriation granted to municipalities under applicable State law. In pursuing said land, immovable property, right-of-way acquisitions, he is authorized to acquire said land, immovable property, right-of-way and to settle the matters thus presented, on such terms and conditions as he shall deem proper and in the best interest of the Lafayette City-Parish Consolidated Government.

It is further noteworthy that no particular land was described in either the ordinance or the submittal memo (or exhibits thereto) that typically accompanies an ordinance submitted to the Councils for consideration. The submittal memo associated with Ordinance No. JO-080-20220 did state, as follows:

Preliminary engineering work performed by Public Works has progressed to a point wherein it has been determined that certain tracts of land or portions thereof will be required for the construction of the Stormwater Management project. The project entails, but is not limited to, determining and evaluating locations for detention ponds along certain channels within the City of Lafayette and the unincorporated areas of Lafayette Parish. The purposed of the project would provide for improvements to drainage, as well as, public safety from potential flooding.

Far from indicating that a project might be implemented (and land purchased) in another parish, this memo indicates that the project would be limited to “detention ponds along certain channels within the City of Lafayette and the unincorporated areas of Lafayette Parish.”

Additionally, while Ordinance No. JO-080-2020 authorized the Mayor-President to acquire land by “the proper use of the power of expropriation granted to municipalities under applicable state law,” and even though no expropriation took place in reference to the St. Martin Parish spoil banks, we observe that “applicable state law” provides, as follows:

Municipalities and parishes may expropriate and otherwise acquire any private property, within or without their limits, for any of the purposes for which they are organized, and for any works that they are authorized to own or operate, or which they are authorized to lease or donate to the United States. ***This Part shall not be construed to confer authority upon a parish or municipality to expropriate property in any other parish without the consent of the police jury of the parish in which the property is situated.***³

Thus, while purportedly authorized by the cited ordinance, no expropriation proceeding could have been brought with respect to the subject land without the consent of the St. Martin Parish Government, which of course was neither sought nor obtained.⁴

³ La. R.S. 33:4621. (Emphasis added.). Curiously, while the text of the statute does not state any limit on the purpose for which expropriation might be sought, it is located in Part I, Chapter 12 of Title 33, which deals with “Acquisition of Property for Public Purposes; Military Facilities, Civilian Conservation Corps Camps, Airports.” See La. R.S. 1:12, :13.

⁴ Courts have recognized that a statutory reference to a “police jury” refers to the governing authority of the parish. See *Yoes v. St. Charles Parish Council*, 400 So. 2d 260, at 262 (La. Ct. App. 4th 1981) (“While it may be argued that [La. R.S. 43:141] refers only to police juries and not to other forms of parochial government which may be created under a home rule charter, it is apparent that the term ‘police juries’ is used synonymously with the term ‘governing authority’ of the parish.”).

Lack of Property Ownership and Consent

We concur with the factual statements set forth in the Draft Report. In reference to the settlement to which reference is made, LCG relied on the intangible and important feature of removing the significant risk of a serious legal claim being advanced by the owner of the unpurchased one-third (1/3) interest in approximately 41 acres of land.⁵

Attorney General’s opinions embrace the proposition that evaluated risk and anticipated cost of litigation can be taken into consideration in connection with the settlement of claims.⁶ Regardless, the untenable predicament inherited by the present LCG administration was managed as best it could be under the circumstances in an attempt to remove significant monetary risks that would be presented if the individual were to prevail in such litigation against LCG. We certainly agree with the commentary in the last grammatical paragraph of Page 5 of the Draft Report.

Violation of St. Martin Parish Ordinance

We have no further comment concerning this narrative.

Failure to Obtain Required Federal Permit

We have no basis to dispute the statements made pertaining to the action taken (or failed to be taken) by the previous administration in reference to the spoil bank removal.

Conclusion

I again express my appreciation for your insight and conclusions in this matter. The current administration of Lafayette Consolidated Government takes its responsibilities to the public very seriously. At the express direction of Mayor-President Monique B. Boulet, LCG has endeavored to ensure that appropriate safeguards are in place to avoid occurrences of this type in the future. This particularly includes presentation by the Legal Department of in-houses seminar that addressed a number of the issues presented in connection with the St. Martin Parish spoil banks project.⁷ In doing so, we are particularly mindful of the recommendations set forth on Pages 8 and 9 of the Draft Report with the further note that Recommendation 6 is underway by the undersigned, to be scheduled as soon as possible (materials are being assembled).⁸

⁵ *Stephen Edward Francez and Cheryl Witte Francez v. Lafayette City-Parish Consolidated Government*, Civil Docket No. C-2023-0893, 15th Judicial District Court, Lafayette Parish, Louisiana.

⁶ La. Att’y Gen. Op. Nos. 01-0130, 12-0189 and 16-0154.

⁷ *Seminar on Real Estate Law, Practice and Procedures*, presented on March 1, 2024; *Overview of Public Bid Law for LCG*, presented on April 12, 2024.

⁸ *Governmental Gumbeaux: Miscellaneous Issues on Procurement and Contracting*, presentation date TBD.

Michael J. "Mike" Waguespack, CPA
July 8, 2025
Page 6

If we can provide any further information responsive to the Draft Report, please feel free to reach out to the undersigned.

Respectfully submitted,



Patrick S. Ottinger

PSO/dma

cc: Monique B. Boulet, Lafayette Mayor-President

CITY ORDINANCE NO. CO-062-2021

AN ORDINANCE OF THE LAFAYETTE CITY COUNCIL AMENDING THE FY 20/21 OPERATING BUDGET AND CAPITAL BUDGET OF THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT BY INCREASING THE USE OF FUND BALANCE IN FUND 101 AND FUND 401 IN THE AMOUNT OF \$5,850,000 AND APPROPRIATING WITHIN THE PUBLIC WORKS DEPARTMENT, CAPITAL IMPROVEMENTS DIVISION FOR ADDITIONAL FUNDING NEEDED FOR NEW DRAINAGE PROJECTS

BE IT ORDAINED by the Lafayette City Council, that:

SECTION 1: The FY 20/21 operating budget and capital budget of the Lafayette City-Parish Consolidated Government are hereby amended by increasing the use of fund balance in Fund 101 and Fund 401 by \$5,850,000 in order to fund new drainage projects (Malapart Detention Pond - \$1,000,000; Bayou Vermilion Spoil Bank Removal - \$3,850,000; River Oaks Property Detention Pond - \$1,000,000).

SECTION 2: This transfer of funds shall be as reflected in any pertinent documents which are attached hereto and made a part hereof and filed in the Office of the Lafayette Clerk of Council.

SECTION 3: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 4: This ordinance shall become effective upon signature of the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon an override of a veto, whichever occurs first.

* * * * *

Justification:
Increase use of Fund 101 - City General Fund Contribution and Increase Use of Fund Balance in Fund 401 to fund new drainage projects.

AUTHORIZATION FOR BUDGETARY REVISIONS


A.8

Comp,
4/15/21

Updated 05/14/20

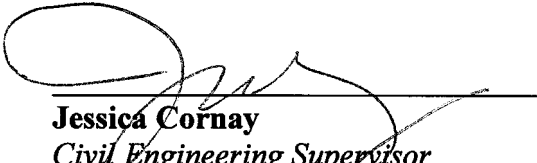
APR 16 2021

Lafayette Consolidated Government
Chief Administrative Officer**Internal Memorandum****Public Works Department**
Capital Improvement & Development (5131)

TO: Cydra Wingerter
DATE: April 12, 2021
THRU: Chad Nepveux 
FROM: Jessica Cornay
SUBJECT: **New Drainage Projects – Transfer of Funds**
Agenda Item

The attached ordinance authorizes the increase use of fund balance in Funds 101 and 401 in the amount of \$5,850,000 and appropriating within the Public Works Department, Capital Improvements Division for new drainage projects (Malapart Detention Pond - \$1,000,000; Bayou Vermilion Spoil Bank Removal - \$3,850,000; River Oaks Property Detention Pond - \$1,000,000).

If you concur, please place on the next available Parish Council agenda.


Jessica Cornay
Civil Engineering Supervisor
Design & Development

pah

Attachment:

c: Pam Hollier
Scott Joubert
Project File

RECEIVED

APR 14 2021

LAFAYETTE CONSOLIDATED GOVERNMENT
CFO-OFFICE OF FINANCE & MGMT

DISPOSITION OF ORDINANCE NO. CO-062-2021

1. This ordinance was introduced:

May 4, 2021

YEAS: Lewis, Naquin,
Hebert, Cook, Lazard

NAYS: None

ABSENT: None

ABSTAIN: None

Final disposition by Council:

May 18, 2021

YEAS: Lewis, Naquin,
Hebert, Cook, Lazard

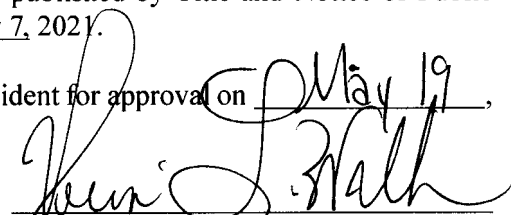
NAYS: None

ABSENT: None

ABSTAIN: None

2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on May 7, 2021.

3. This ordinance was presented to the Mayor-President for approval on May 19, 2021, at 10:45 o'clock a.m.


CLERK OF THE COUNCIL

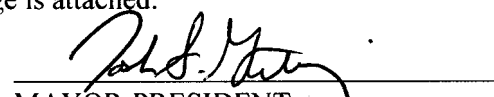
4. Disposition by Mayor-President:

I hereby:

A. Approve this ordinance, the 24 day of MAY, 2021, at 12:40 o'clock a.m.

B. Veto this ordinance, the _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.

C. Line item veto certain items this _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.


MAYOR-PRESIDENT

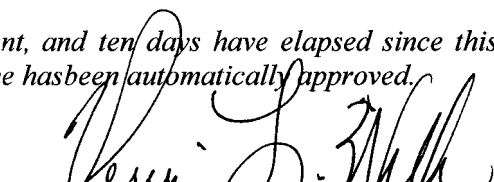
5. Returned to Council Office ~~with~~ without veto message on May 24, 2021, at 2:22 o'clock p.m.

6. Reconsideration by Council (if vetoed):

On _____, 2021, the Council did/refused to adopt this ordinance after the Mayor-President's veto.

7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2021, at _____ o'clock _____.m.

If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.


CLERK OF THE COUNCIL

8. Full publication of this ordinance was made in the Advertiser on May 21, 2021.

ORDINANCE NO. JO-080-2020

**A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL AND THE
LAFAYETTE PARISH COUNCIL DECLARING THE STORMWATER
MANAGEMENT PROJECT A PUBLIC NECESSITY AND AUTHORIZING THE
ACQUISITION OF THE NECESSARY RIGHTS-OF-WAY, IMMOVABLE PROPERTY
AND OTHER PROPERTY RIGHTS REQUISITE TO THE CONSTRUCTION OF SAID
PROJECT, EITHER ON AN AMICABLE BASIS OR THROUGH THE USE OF THE
EXPROPRIATION PROCESS, IF NECESSARY**

BE IT ORDAINED by the Lafayette City Council and the Lafayette Parish Council,
that:

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have declared
the construction of a comprehensive Stormwater Management Project (hereinafter referred to as
“Project”) a public necessity; and

WHEREAS, the public purpose to be served by the construction of said Project is to
provide for the improvement of drainage, as well as, protection and public safety from flooding;
and

WHEREAS, the proposed Project limits are shown on the attached Exhibit “A” and will
primarily entail, but may not be entirely limited to, determining and evaluating locations for and
the design and construction of detention ponds along the following channels: Acorn Drive
Coulee (W-13), Anselm Coulee (W-2), Bayou Carencro, Lateral 9 (W-32 L9), Bayou La Salle (b)
(W-22), Bayou St. Clair (W-15), Bayou Vermilion (W-34), Beau Bassin Coulee (W-16), Coulee
Ile des Cannes (W-5), Coulee Ile des Cannes, Lateral 8 (W-5 L8), Coulee Mine East (W-10 East),
Indian Bayou (W-26), Isaac Verot Coulee, Lateral 4 (W-6 L4), Isaac Verot Coulee, Lateral 6A
(W-6 L6A) and Isaac Verot Coulee, Lateral 7 (W-6 L7); and

WHEREAS, preliminary engineering work performed by the Public Works Department
has progressed to a point wherein it has been determined that certain tracts of land or portions
thereof will be required for construction of the Project.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City Council
and the Lafayette Parish Council, that:

SECTION 1: All of the aforescribed “Whereas” clauses are adopted as part of this
ordinance.

SECTION 2: The Lafayette Mayor-President is hereby authorized to acquire such land,
immovable property, rights-of-way, servitudes, or other property rights as are determined to be
necessary under good engineering standards to provide for the design and construction of said
Project; and he is authorized to do so on an amicable basis or by the proper use of the power of
expropriation granted to municipalities under applicable State law. In pursuing said land,

immovable property, right-of-way acquisitions, he is authorized to acquire said land, immovable property, right-of-way and to settle the matters thus presented, on such terms and conditions as he shall deem proper and in the best interest of the Lafayette City-Parish Consolidated Government.

SECTION 3: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 4: After first having been adopted by a majority of the authorized membership of both the Lafayette Parish Council and the Lafayette City Council, this joint ordinance shall become effective upon signature of this joint ordinance by the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon override of a veto, whichever occurs first.

* * * * *

AUG 04 2020

Lafayette Consolidated Government
Chief Administrative Officer**Internal Memorandum****Public Works Department
Office of the Director (5200)**

TO: Cydra Wingerter

FROM: Chad Nepveaux

SUBJECT: Stormwater Management – Public Necessity
Agenda Item

DATE: August 4, 2020

Preliminary engineering work performed by Public Works has progressed to a point wherein it has been determined that certain tracts of land or portions thereof will be required for the construction of the Stormwater Management project. The project entails, but is not limited to, determining and evaluating locations for detention ponds along certain channels within the City of Lafayette and the unincorporated areas of Lafayette Parish. The purposed of the project would provide for improvements to drainage, as well as, public safety from potential flooding.


Please place this item on the next appropriate Council agenda for introduction.



Chad Nepveaux
Director of Public Works

pah

attachment

c: Pam Hollier
Scott Joubert
Fred Trahan 
Jessica Cornay
Project File #1727

t: 337.291.8577 / hedmond@lafayettela.gov / f: 337.291.8111

**24" x 36" MAP AVAILABLE FOR VIEWING
@ COUNCIL OFFICE**

LAFAYETTE JOINT COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) JUSTIFICATION FOR REQUEST: An ordinance of the Lafayette City Council and the Lafayette Parish Council declaring the Stormwater Management Project a public necessity and authorizing the acquisition of the necessary rights-of-way, immovable property and other property rights requisite to the construction of said project, either on an amicable basis or through the use of the expropriation process if necessary

2) ACTION REQUESTED: Adoption of Ordinance

3) COUNCIL DISTRICT(S) (if applicable): _____

If this involves a budget revision, please complete a budgetary revision form.

4) REQUESTED ACTION OF COUNCIL:

A) INTRODUCTION: August 18, 2020

B) FINAL ADOPTION: September 1, 2020

5) DOCUMENTATION INCLUDED WITH THIS REQUEST:

A) Cover letter (1 page)

B) Submittal Form (1 page)

C) Ordinance (2 page)

D) Drainage Map (1 page)

6) FISCAL IMPACT:

_____ Fiscal Impact (Explain)

X No Fiscal Impact

RECOMMENDED BY:


DIRECTOR OF PUBLIC WORKS

APPROVED FOR AGENDA:


CHIEF ADMINISTRATIVE OFFICER

APPENDIX B

Joshua Guillory's Response

Guillory's Response to Louisiana Legislative Auditor's Political Memorandum

The Louisiana Legislative Auditor has perfected the art of the political drive-by. Sirens are blaring, lights are flashing, and once again the LLA misses the facts only to land a political bomb on a missed target. For three-and-a-half years, the Louisiana Legislative Auditor has reviewed this project, only to reemerge with the very same tired talking-points its political patrons trotted out in 2022 and 2023 and is now being repackaged as a sort of “exit memo” that reeks of lawfare, not oversight. This latest volley of political arrows proves once again that the LLA, a politically-appointed fixture masquerading as a watchdog, is little more than a hitman for the elite's intent on dragging Lafayette Parish (and our state) backwards. I hope you see their memo for what it is: petty, rushed, and embarrassingly thin.

THE LOUISIANA LEGISLATIVE AUDITOR: A CENTURY OF POLITICAL PROSTITUTION

The Louisiana Legislative Auditor traces its lineage to before Huey Long. In every era of existence, the LLA has been a political organization cosplaying as oversight.

- **Huey Long Era (1928–1935)** Under Governor Huey Long, the auditor's office was notoriously deployed to intimidate political rivals and enforce loyalty, exemplifying early and explicit political manipulation of audits.
- **Earl K. Long Administration (1948–1960)** Governor Earl Long routinely leveraged audits as a political jab, publicly threatening adversaries with financial scrutiny, cementing audits as tools of political coercion.

- **Joint Legislative Control Established (1964)** Legislative Act 16 of 1964 formalized joint House and Senate control over the auditor's election, leaving no firewalls of protection against (real) corruption between the Legislature and the LLA. This one Act voluntarily institutionalized and facilitated audits as political weapons.
- **1974 Constitutional Convention** While the 1974 constitution promised independent oversight, amendments explicitly retained legislative funding control, intentionally preserving avenues for political influence and selective audit manipulation.
- **Stelly Plan Controversy (2002–2008)** Audits were strategically deployed during debates over the repeal of the Stelly tax reforms, selectively targeting entities associated with political opponents, further evidencing audit weaponization.

Playbook of a Paper Tiger

- **Interference in Third Party Audits:**

- According to testimony given by LCG's independent auditors at the time, Burton Kolder and Bryan Joubert, at the May 23, 2023 joint council meeting, the LLA mandated that LCG's independent auditors submit their 2022 findings to the LLA before any review or dispute by LCG staff. In all previous years, LCG was given the opportunity to contest findings and, if justified, have inappropriate findings removed by providing additional documentation to satisfy auditor concerns. "This is unusual." This established process ensures honest and accurate public audits and resolves ambiguities. The deviation from this protocol in 2023, where the LLA intervened and obstructed their own established process, appears to be politically motivated and probably illegal. ***Why else would the LLA then re-release nearly the same disproven allegations more than 3 years later?***

- **Strategic Release Dates:**

- These debunked allegations first emerged conveniently in the heat of the 2023 election.

Coincidence? These “audit findings” were political in 2023, and the “findings” listed in the LLA’s misleading publication of half-truths remains political. ***Why else would the auditor not allow corrections and revisions to findings prior to release in 2023 when their own protocols call for it?*** They knew it was wrong then, just as they know it is wrong now.

Political Target	Year	What Happened
Public Service Commission	2001	While campaigning against Commissioner Jay Blossman for governor, then-Auditor Dan Kyle issued a “performance audit” hammering the Public Service Commission. The release coincided with the height of the campaign and became Kyle’s principal attack ad paid for with public funds instead of campaign dollars.
Jefferson Parish Government	2015	In 2015, Parish President John Young was seeking re-election. Days before the October primary, the LLA conveniently pushed out a critical audit of Jefferson Parish finances. Local media ran the allegations nonstop, crowding out Young’s closing message to voters and forcing his campaign into a defensive posture. SHOCKER: The allegations were disproven, just like the allegations in the LLA’s political memo I am responding to.

Town of Independence	2015	Audit published weeks before local elections, strongly influencing electoral outcomes. Comparable situations in other towns received no similar audits.
State Police Superintendent Mike Edmonson	2017	Audit draft leaked to media prior to response; intensified scandal during administrative transition.
Orleans Parish District Attorney	2019	Released strategically amid controversial criminal justice reforms and DA elections, amplifying public criticism.
Lafayette Consolidated Government	2023	May 23, 2023- Just five months before the Lafayette Mayor-President primary, the LLA released its draft report, <i>Unauthorized Public Spending & Permit Failures</i> , on the Cypress Island spoil-bank project.

- They got the headlines.
- They don't care.
- Remember, the LLA dates back to before the Huey Long era. The above examples are literally just a small fraction of recent instances of the weaponization of the Louisiana Legislative Auditor. The reality is that the LLA has been partaking in political hits for decades.
- **Leak First, Verify Never:**
 - The Louisiana Legislative Auditor is notorious for leaking misleading information to left-leaning political publications.
 - **Annual Statewide Audit Report (2025)** The Louisiana Legislative Auditor released an annual report alleging over \$3 billion in questionable expenses across multiple state agencies. **The timing and selective media dissemination** suggested political motivation rather than impartial oversight, as **information reached certain**

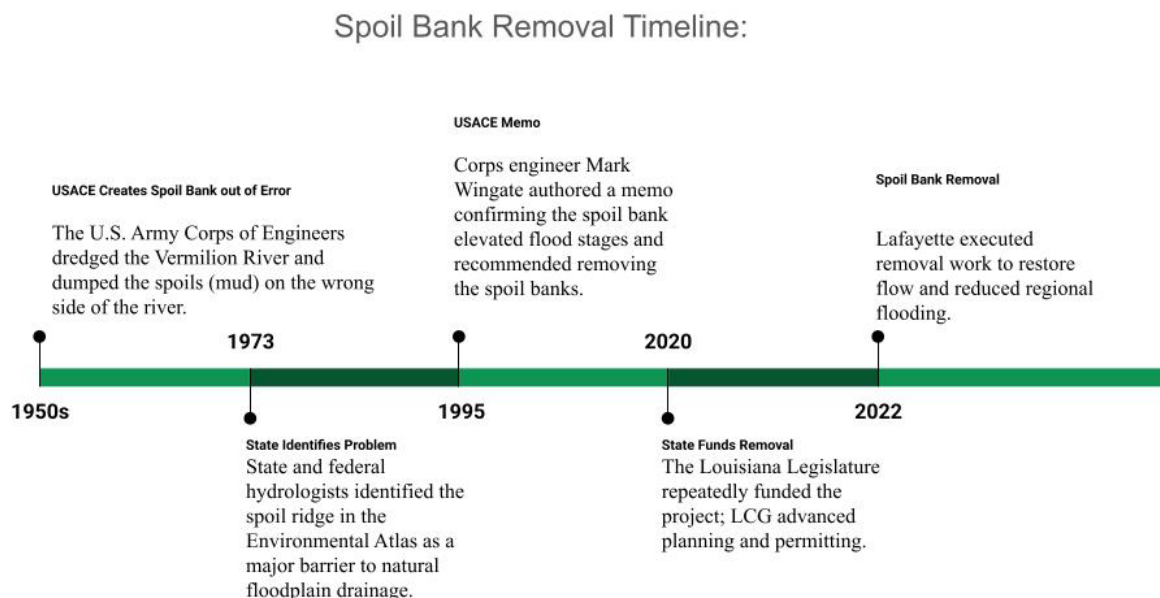
media outlets prematurely and without sufficient context for clarification (New Orleans City Business, Feb 17, 2025).

- This is another recent example. The LLA may very well prove their allegations. Regardless of the final dispensation of the LLA’s allegations, the simple fact is that they leaked it to pre-bias public opinion.
- **St. Martin Spoil Banks Project (2023)** It should be no shock to anyone that the LLA’s draft reports routinely “mysteriously” appear in friendly media, poisoning the well of truth from which voters and constituents draw their news. During the audit process, I remember a time when I met with one of the auditors and within the hour, everything discussed appeared on *The Current*, a local news blog. ***Is this the type of behavior expected of our legislative auditor?*** Clearly not.
- **Courtroom Humiliations:** From the 2020 Ethics Board’s injunction loss to multiple defamation suits, the LLA’s wings have been clipped by judges again and again. The only power these political hack jobs have are through media outlets.
 - **State Ethics Board Lawsuit (2020)** In 2020, the Louisiana State Ethics Board sued the Louisiana Legislative Auditor to prevent access to confidential records, citing concerns about possible selective leaks or premature disclosures of sensitive information. This action underscored long-standing concerns about the auditor’s methods of handling confidential information, suggesting a politically influenced process.
 - **Louisiana Board of Ethics v. Daryl G. Purpera (2021)** In this case, the LLA sought access to confidential documents from the Louisiana Board of Ethics related to complaints and investigations involving alleged violations of the Ethics Code.

The Board refused, citing statutory privileges that protect such documents. The trial court ruled in favor of the Board, denying the LLA access to these confidential records. The LLA appealed the decision, but the Louisiana Court of Appeal, First Circuit, affirmed the trial court's judgment, reinforcing the confidentiality protections afforded to the Ethics Board's investigative materials.

- **David LaCerte v. State of Louisiana (2025):** David LaCerte, former Secretary of the Louisiana Department of Veterans Affairs, sued the LLA and the State Inspector General for defamation following a joint investigation report. The Louisiana Court of Appeal reversed a previous summary judgment in favor of the defendants, allowing LaCerte's claims to proceed.

History of the Cypress Island Spoil Bank



- **1950s:** The U.S. Army Corps of Engineers dredged the Vermilion River and **dumped the spoils (mud) on the wrong side of the river.** You would think that

the federal government would fix their problem. Instead, they were ok with making an entire watershed prone to flooding. The Army Corps essentially, likely unintentionally, **creating an artificial drainage obstruction.**

- **1973:** State and federal hydrologists **identified the spoil ridge** in the Environmental Atlas **as a major barrier to natural floodplain drainage.**
- **1995:** Corps engineer **Mark Wingate** authored a memo **confirming** the spoil bank elevated flood stages and **recommended removing the spoil banks.**
- **2019–2023:** The **Louisiana Legislature** repeatedly **funded the project.** LCG advanced planning and permitting.
- **2022:** Lafayette executed removal work to restore flow and reduced regional flooding. No one has flooded from this project, but thousands of homes in **Lafayette, St. Martin, and Vermilion Parishes DID NOT FLOOD** because of the removal.

Legislative History of the Project

Date	Public Body	Instrument	Vote	Total Votes Supporting
May 13, 2021	Louisiana House of Representatives	Act 485 of 2021	99-0-0-6	99
May 18, 2021	Lafayette City Council	CO-062-2021	5-0	5
May 20, 2021	Lafayette City Council	Emergency Ord. CO-077-2021	5-0	5

May 27, 2021	Louisiana Senate	HB 2 Senate concurrence on capital-outlay bill	38-0	38
Aug 19, 2021	State Bond Commission	Agenda Item 29	14-0	14
Oct 21, 2021	State Bond Commission	Agenda Item 37	14-0	14
Feb 2022	Lafayette City Council	CO-008-2022	5-0	5
May 11, 2022	State Bond Commission	Agenda Item 32	14-0	14
		Total Votes Supporting:		204

The Louisiana State Bond Commission is composed of the Governor (or designee), Lieutenant Governor (or designee), President of the Senate (or designee), Speaker of the House of Representatives (or designee), State Treasurer (who serves as Chairperson), Secretary of State, Attorney General, Commissioner of Administration, Chair of the Senate Finance Committee, Chair of the House Appropriations Committee, Chair of the Senate Revenue and Fiscal Affairs Committee, Chair of the House Ways and Means Committee, and two additional legislators appointed respectively by the President of the Senate and the Speaker of the House. They all voted yes. Every time.

This whole thing is political. The LLA could have made findings in all of the above legislation approving and authorizing the Spoil Bank removal project. I list at 8 times above where a public body (both LCG and the Louisiana Legislature) authorized the project.

- *WHY didn't the Louisiana Legislative Auditor do anything in 2019?*
- *WHY didn't the Louisiana Legislative Auditor do anything in 2020?*
- *WHY didn't the Louisiana Legislative Auditor do anything in 2021?*

We Know *WHY*. It wasn't politically convenient at the time. Nor did his political bosses instruct the lawfare. I had not yet pissed off the old guard that continues to drag our city and parish down. The LLA could have taken steps to stop the project for four years! He could have produced findings, he could have filed a petition asking for an injunction, he could have spoken to his legislators as to why they passed legislation authorizing this project, and likely so much more.

That would have taken effort, and an ounce of thought. So, it is understandable why a no-name bureaucrat whose "super bowl" is filing these political hit pieces at convenient times would not have the motivation to work.

I FOLLOWED THE PROCESS. THEY FOLLOWED A SCRIPT.

I followed the process. They followed a script...and they still are. I respect process. I always have. I despise lawfare, wasteful bureaucracy, petty power abuse, and the destruction that follows.

I despise evil. Evil is real, and it's acting here. Some confuse that with process. I don't. The Louisiana Legislative Auditor and perhaps others may try to say that I have no regard for process. That's certainly what the LLA's political memo implies. But let's think clearly for a moment. Let's talk about process. Set aside the lengthy public process in the spoil bank removal project. Take it completely out of the equation. Here's what is not in dispute:

Some of the very best attorneys in the state appeared in public, open council meetings, and directly disputed the exact same claims now being repackaged in a political memo by the LLA.

These attorneys are not political hacks. They are seasoned, respected experts. Several of them are still working for LCG today. The current Mayor-President and LCG's legal team would not keep any attorney who lacked credibility or competence. These lawyers, including those retained by the current administration, are smart, professional, and trusted by this administration. That speaks for itself. These same attorneys have integrity. They do not throw out opinions casually. When they speak, they do so after due diligence, serious thought, and with deep experience. This administration was right to keep them.

When those lawyers defended the civil service employees, departments, councils, administration, and all elected officials, including me, they did so with conviction, clarity, and accuracy. They defended us against the same claims now being recycled. They know more about this issue than the Louisiana Legislative Auditor.

The question must be asked, *Why does the Louisiana Legislative Auditor, an unelected bureaucrat who walks with impunity through the damage he inflicts, believe he is smarter and more informed than the very attorneys hired and retained by LCG, the city council, the Louisiana Legislature, the former Governor, the Bond Commission, the former State Treasurer, and the countless civil servants who did their jobs and followed the law?*

Why has the LLA not audited the former Governor? Governor John Bel Edwards signed HB 2, which authorized the project and its funding. You do not sign and fund something you disapprove of. Governor Edwards further, in a separate and independent act, voted to support and fund the Spoil Bank Removal Project in the Bond Commission ... *twice*.

Why has the LLA not audited the Louisiana Legislature? They drafted and passed HB 2, the same legislation listed above. But of course, that would require the LLA to audit the same body that funds his office. That would take real courage and integrity.

Now let's be honest about what this is. The current Mayor-President ran on lies about me. The media carried those lies. And there is no denying the damage those lies caused. None of the whispers, none of the character assassinations, none of the false criminal suggestions made about me or my family by the Blanco machine have proven true. Not one. This is a coordinated political attack. The LLA is either part of it or is being used like so many others by the same small group that has always pulled the strings. Ms. Blanco-Boulet will use this so-called finding to say she was right all along. Easy to do when you have the microphone and the media on your side to push whatever false narrative you want. She has already started to push a false narrative about the local budget, something she has consistently struggled to understand. She is positioning herself to use both the so-called findings and the made-up idea of inheriting a deficit in order to create a smokescreen for her administration's inactivity and lack of productivity.

On July 3, 2025, for example, Monique went on KPEL 96.5 FM and blatantly lied to the public, claiming she is just now able to address the deficit left by the previous administration. That is false. And I believe she knows it. If she doesn't, that is unfortunate, and she would only confirm the common belief that she is a puppet. Public records show my administration gave her a balanced budget, a lean and efficient government, and a thriving local economy.

Someone should really inform her that the only deficit she is seeing right now is from her very own budget. LCG is operating under the Blanco-Boulet administration's budget. ***Why lie about something so easily proven false?*** The reason is clear. A lack of knowledge coupled with ego is a dangerous combination.

When politicians have no accomplishments and no vision, they resort to lies and deception. That is not leadership. That is poison to this community. But that is not us. The people of this parish deserve better than that. That kind of behavior does not reflect who we are, and it does not give this community the kind of government it deserves. In the end, I know truth has a longer arc than any political attack. I still believe that justice, real justice, will speak louder than spin. The games may feel endless, and the lies may echo for a while, but they do not endure. I trust that what is done in darkness will be brought to light. That's not just optimism. That is faith in the people here, and faith in something greater than any office, any microphone, or any memo.

ALLEGATION: LCG illegally spent Lafayette taxpayer dollars to acquire land in St. Martin Parish without lawful authority.

This allegation is flat-out wrong and transparently political. The LLA is swinging for headlines, not an accurate accounting of what happened.

Why the Auditor is Wrong:

- City Council-approved authority. Ordinance JO-080-2020 declared the spoil-bank removal a public necessity and empowered the Mayor-President to “acquire, lease, or expropriate any servitudes, rights-of-way, or other real property rights necessary to complete the project.” The ordinance states: “acquisition or expropriation of property interests required for project completion.”(source:)
- Charter & state law provide for inter-parish purchases. The Lafayette Home Rule Charter §§ 1-05 & 1-06 command liberal construction of LCG’s powers, while La. R.S. 33:4621 lets any parish or municipality acquire property “within or without its

territorial boundaries” for a public purpose. This is public information. It literally took me four minutes to google the statute, and read it. I am putting it in my response so that the LLA has it for future references, not that the law matters to a political hack. Attorney General’s Opinion. AG Op. 09-0302 (May 21, 2010) confirms a municipality may purchase land outside its limits for a public purpose; flood-control works are an even stronger public purpose.

- On-record legal testimony. “Nothing in the Charter prohibits LCG from acquiring property in another parish.” Current Assistant City-Parish Attorney Mike Hebert, Joint Council meeting, May 24, 2023.
- Past precedent, same auditor. Ordinance CO-157-2009 authorized LUS to buy the La Neuville Substation site outside parish lines; the 2011 audit found no fault. The LLA had no “finding” then. What is different in 2023? I’ll tell you what: A Blanco is involved.
- Regional problem, regional solution. Louisiana courts recognize that political subdivisions may act beyond their borders when drainage or flood protection spans multiple parishes.
 - *Terrebonne Parish Police Jury v. Matherne* (1981): In this landmark case, the Louisiana Supreme Court affirmed a parish’s right to take action to protect its public drainage channels, even on private property.
 - Attorney General Opinion No. 99-380: This opinion discusses the authority of parishes to cooperate on drainage projects, acknowledging the complex nature of drainage that crosses parish lines and the legal frameworks that facilitate such cooperation.

- **R.S. 33:1236:** Empowers parish governing authorities to open natural drains and perform all necessary work to ensure effective drainage for their parish.

Lafayette Charter 1-03	The Boundaries of Lafayette Parish and the City of Lafayette shall be those in effect as of the effective date of this charter and shall be subject to change thereafter as provided by law.	No apparent restriction on where LCG could or could not buy land.
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Lafayette Charter 1-04	<p>A. Except as otherwise provided herein, the governmental functions of the City of Lafayette are hereby consolidated with the governmental functions of Lafayette Parish. The name of the new government shall be the Lafayette City-Parish Consolidated Government, hereinafter referred to as the "City-Parish Government."</p> <p>B. The City of Lafayette shall continue to exist as a legal entity and except as provided in this charter, shall exercise all powers granted by general state law and the state constitution for municipalities of the same population class. The Lafayette City Council shall be the governing authority of the City of Lafayette for all purposes, including, but not limited to, levying property taxes in accordance with Article VI, Section 27 of the constitution, for providing municipal type services, and for purposes of annexation. The city shall render certain municipal services as provided under this charter and participate in federal and state grants, shared revenues and shared taxes peculiar to municipal governments.</p> <p>C. The Parish of Lafayette shall continue to exist as a legal entity and except as provided in this charter, shall exercise all powers granted by general state law and the state constitution for parishes of the same population class. The Parish Council shall be the governing authority of the Parish of Lafayette for all purposes, including, but not limited to, levying tax in accordance with Article VI, Section 26 of the constitution.</p>	No apparent restriction on where LCG could or could not buy land.
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Lafayette Charter 1-05	<p>Except as otherwise provided by this charter the City-Parish Government shall continue to have all the powers, rights, privileges, immunities and authority heretofore possessed by the City of Lafayette and Lafayette Parish under the laws of the state. The government shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent with this charter as may be conferred on or granted to a local governmental subdivision by the constitution and general laws of the state, and more specifically, <u>the government shall have and is hereby granted the right and authority to exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by this charter, or by general state law, or inconsistent with the constitution.</u></p>	<p>No apparent restriction on where LCG could or could not buy land.</p> <p>This section says any action not prohibited by the charter or state law is allowable. <i>So what does state law say?</i></p>
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Lafayette Charter 1-06	<p>The Lafayette City Council and the Lafayette Parish Council shall have the right, power and authority to pass all ordinances requisite or necessary to promote, protect and preserve the general welfare, safety, health, peace and good order of the City of Lafayette and the Parish of Lafayette respectively, including, but not by way of limitation, the right, power and authority to pass ordinances on all subject matters necessary, requisite or proper for the management of their respective affairs, and all other subject matter without exception, subject only to the limitation that the same shall not be inconsistent with this Charter, the constitution, or expressly denied by general law.</p>	<p>Looks like more of the same... <i>I wonder why the auditor cited with authority, in bold these sections of the charter knowing they did not apply?</i></p>
La. R.S. 33:4621	<p><u>Municipalities and parishes may expropriate and otherwise acquire ANY private property, WITHIN or WITHOUT their limits,</u> for any of the purposes for which they are organized, and for any works that they are authorized to own or operate, or which they are authorized to lease or donate to the United States. This Part shall not be construed to confer authority upon a parish or municipality to expropriate property in any other parish without the consent of the police jury of the parish in which the property is situated.</p>	<p>Clear as day. LCG was permitted to purchase land in St. Martin Parish.</p>

- The auditor claims the Charter prohibits work or land purchases outside of the political boundaries of Lafayette Parish in sections 1-03 through 1-07. The auditor

only references the text. Again, I'm only sharing some law with the LLA in the hope that it helps the next review. Let us review what the text actually says:

Bottom Line:

- The Auditor knowingly or unknowingly cited sections of the charter as prohibiting the purchase of land outside of Lafayette Parish despite evidence clearer than glacier water to the contrary.
- LCG exercised clear, legislatively-granted authority to buy land necessary for flood protection. The auditor's "unauthorized expenditure" claim fail under the weight of ordinances and statutes. This "finding" should be retracted. But that would require integrity.

ALLEGATION: The auditor claims LCG acted on the property without the consent of the other owners.

This is another empty accusation that is wrong on the law, wrong on the facts, and again, nakedly political. The LLA pretends to misunderstand the Civil Code, co-ownership rules, and the urgent public safety need driving the project. Weaponized incompetence is unacceptable in government. The facts don't support their narrative.

Why the Auditor is Wrong:

- LCG owned the majority share: Public records show LCG held a two-thirds (66⅔%) undivided interest in the tract, giving it controlling ownership of the property.
- Louisiana co-ownership law backs majority action: "The use and management of a thing held in indivision is determined by a majority of the ownership interests." (La.

C.C. arts. 797-818). A majority owner may act so long as the minority's rights are not destroyed. LCG acted on its majority interest.

- No unanimous consent required for ordinary management: Ordinary access, maintenance, or improvements fall squarely within the majority owner's legal authority. Unanimous written consent is only necessary for acts that permanently impair minority rights. Nobody's rights were impacted.
- The auditor cites no contrary statute or case: The finding is long on rhetoric and utterly devoid of any legal citation overturning Louisiana's settled co-ownership rules.
- Courts have upheld this principle for decades: See, e.g., *Caffery v. Powell*, 320 So. 2d 223 (La. 1975) (majority co-owner may grant servitude where minority rights remain intact).

LCG's actions were fully lawful. The auditor's "lack of consent" narrative collapses under the plain language of the Civil Code and the undisputed ownership records. This moronic, obviously baseless finding should be withdrawn.

ALLEGATION: LCG "failed to obtain the required federal permit" for spoil-bank removal.

The auditor's claim here is wrong and just is more political posturing. They want to turn a paperwork non-issue into a scandal. The facts show that I followed the law, and the project was delivered as re-designed making this whole process outside federal jurisdiction. They are sinking in swamp muck. I'm standing on the truth of solid ground.

Reality Check:

- Permits apply only to discharges into waters. Section 404 triggers only when dredged or fill material enters “waters of the United States.”
 - “Activities which bring an area into farming, silviculture or ranching use are not part of an established operation. An operation ceases to be established when the area in which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operation. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a section 404 permit whether or not it was part of an established farming, silviculture or ranching operation”
- Redesign eliminated every regulated impact. Final work limits were set at +3.5 ft NAVD, landward of the Corps-mapped ordinary high-water mark. Spoil was side-cast on adjacent uplands where the USACE should have put them in 1950s.
- USACE guidance backs us up. Regulatory Guidance Letter 07-02 classifies “beneficial use on adjacent upland” as non-jurisdictional.
- Federal rules impose no duty to chase a “no-permit” letter once impacts are removed. Withdrawing the application is routine practice. It was withdrawn because it was not needed.
- The auditor looked at the wrong plans. They relied on an early submittal, ignoring the redesign that mooted the permit. The LLA confused “no permit required” with “permit missing.”

- Even the Corps' own letter was boilerplate. It merely said re-review would be needed if we later changed the design.

Bottom Line:

100% upland work = 0% federal jurisdiction. Their allegation collapses under their own weight.

ALLEGATION: The findings allege that the February 2022 amendment to LCG's "as-needed" excavation contract with Rigid Constructors drastically altered the project scope, violated Louisiana Public Bid Law, and funneled \$3.7 million into an unauthorized spoil-bank removal in St. Martin Parish.

Reality:

This allegation is C rated political acting, not public oversight. The LLA twists a standard drainage change-order into a headline because it stings to admit we protected Lafayette families while they filed paperwork. The contract, the amendment, and the cash flow are all squarely within Louisiana law. They throw mud to detract from their own inadequacies. We moved dirt so Lafayette and St. Martin Parish families wouldn't weep over losing their homes.

Why the Auditor is Wrong:

- The Contract Amendment Was Squarely Within the Original Scope: The amendment kept the core task, "excavation and disposal," intact, simply adding barges, cranes, and expedited mobilization required by the site and weather. "The work to be performed in the Amendment is not different than the Contract work. It was just being performed under a more stringent schedule and in a different, more difficult environment." 【2023-05-23 LCG Audit Responses】

- Unit-Price Precedent: Louisiana courts approve long-term, unit-price “as-needed” contracts for parish work, confirming our procurement model was routine and lawful (see *H&O Investments v. Parish of Jefferson*, *Data Management v. Parish of St. John*). 【2023-05-23 LCG Audit Responses】
- Change-Order Statute Satisfied: Where the contract lacks a unit price, La. R.S. 38:2212(M)(5) permits negotiation. Every added line-item including ramps, stand-by mechanics, and patrol boats was costed, documented, and approved exactly as the statute demands. 【2023-05-23 LCG Audit Responses】
- The Emergency Imperative Drove the Amendment. Record flood threat, a narrow 72-hour weather window, and formal emergency declarations made delay impossible. Public safety, not politics, drove every decision whereas politics not public safety drives this memo on what is a past audit.
- Legal Authority. The Home Rule Charter expressly empowers the Mayor-President to acquire property and execute contracts for drainage and other projects subject to the powers, control, and consent of the councils. (Source: Lafayette City Parish Charter)
- Local Ordinances Back the Project. Ordinance JO-080-2020 and JO-062-2021 declared spoil-bank removal a public necessity parish-wide and amended the capital budget to fund the project.
- State Capital-Outlay Mandate. State Act 20 (2019) appropriate bond funds for “Cypress Island Swamp Spoil-Bank Removal (Lafayette, St. Martin),” confirming legislative intent.
- Council Meeting Minutes:

- “Puente explained that there was an "as needed" excavation disposal/contract with five (5) bidders. She noted that the river was going to be at a very low stage and a decision was made to issue change orders which was negotiated in advance of the work beginning. She acknowledged that dirt from St. Martin Parish was excavated and brought over to Lafayette. Puente stated that Lafayette owns two-thirds interest ownership of the land and that there was a technical issue with the change order because technically, it was part of Lafayette's property...”
- Denise Puente, Assistant City-Parish Attorney, explained that an emergency declaration was issued on May 18, 2021 [2022] due to a high rain event which resulted in flooding.
- “Naquin questioned if the eminent threat was the reason why LCG was able to continue the work under the emergency declaration. Puente noted that at the time the contract was awarded, there was eminent threat of flooding to the subdivision” and an emergency declaration at both the state and local levels.

Why the Audit’s Theory Fails:

- Cherry-Picked Law: The draft quotes La. R.S. 38:2212(M)(4) but ignores (M)(1)-(3), which plainly allow in-scope change orders without re-bid.
- Emergency Declarations Ignored: The Auditor omits the local and state emergency proclamations legally compelling immediate action. Ignoring this declaration

rewrites the timeline and misstates LCG's duty to protect life and property. The emergency declaration changes which processes apply.

- The record shows a compliant contract, a justified amendment, and a project that keeps Lafayette dry. While they brandish accusations, we delivered results.

TABLE OF QUESTIONS:

Why else would the LLA re-release nearly the same disproven allegations more than 3 years later?	3
Why else would the auditor not allow corrections and revisions to findings prior to release in 2023 when their own protocols call for it?	3
Is this the type of behavior expected of our legislative auditor?	4
WHY didn't the Louisiana Legislative Auditor do anything in 2019?	7
WHY didn't the Louisiana Legislative Auditor do anything in 2020?	7
WHY didn't the Louisiana Legislative Auditor do anything in 2021?	7
Why does the Louisiana Legislative Auditor, an unelected bureaucrat who walks with impunity through the damage he inflicts, believe he is smarter and more informed than the very attorneys hired and retained by LCG, the city council, the Louisiana Legislature, the former Governor, the Bond Commission, the former State Treasurer, and the countless civil servants who did their jobs and followed the law?	8
Why has the LLA not audited the former Governor?	8
Why has the LLA not audited the Louisiana Legislature?	8
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APPENDIX C

Gregory Logan's Response

GREGORY J. LOGAN

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July 14, 2025

Michael J. "Mike" Waguespack, CPA
Louisiana Legislative Auditor
Post Office Box 94397
Baton Rouge, Louisiana 70804-9397

Via email only: responses@lla.la.gov

Re: Lafayette Consolidated Government
Investigative Audit

Dear Mr. Waguespack:

First and foremost, thank you for the opportunity to review the draft audit report and the chance to comment. As discussed in the exit interview, I had reservations at the time the Revised Spoil Bank Project ("the project") proceeded and would not give my approval, your report tends to indicate that I made a "decision to proceed despite knowing legal deficiencies". This is contrary to the clear information discussed and documentary evidence provided during my interview. My answers regarding the St. Martin Parish ordinances and the ownership of the subject tract were my legal conclusions of why these issues were not as serious as indicated in your investigator's questions and comments during the June 20, 2024 interview. As I would not sign off on the project at the time, it was retrospective conclusions of facts and law as to the answers to the questions some two and a half

years after the project. Furthermore, a retrospective review of the project by a highly specialized team concluded that it was an extreme stretch to find a violation of the Clean Water Act or the Rivers and Harbors Act; a position I believe was finally taken by the Environmental Protection Agency (EPA) in its exit interview with Lafayette Consolidated Government (“LCG”) officials and the current City-Parish Attorney.

Several days prior to the project commencement, when I relayed my concerns to the Mayor-President and his Executive Chief of Staff, the Mayor-President’s directive was clear, do not proceed if illegal or any regulations are going to be violated. At that point, the Executive Chief of Staff took over direct communication with the contractor, consulting engineers and the Assistant City-Parish attorneys specializing in environmental regulations that I had engaged to review the project and give advice on the state and federal regulations. There was a very narrow window of opportunity to accomplish the project due to the Vermilion Bayou water stage. When the time came to proceed, neither myself nor the Director of Public Works would approve the notice to proceed. The Executive Chief of Staff moved forward with the notice to proceed; I gave your investigator a copy of the email communication to the contractor which I submit was conveniently sent after 5 PM to avoid any intervention to stop the project.

Next, your investigator asked if I had visited the site before or during the project construction. My answer was, no. I informed him that I had only visited the site months after completion to meet with the Chief of the Jurisdiction and Enforcement branch of the U.S. Army Corps of Engineers (“USACE” or “the Corps”), Mr. William R. Netherly (“Netherly”). During that site visit, Netherly observed that the wetlands were still delineated by markers consisting of wood stakes and surveyor’s tape. He commented that he could see that there was a genuine effort to avoid all wetlands. He addressed a few areas that the equipment had evidently traversed wetlands and the fact that some of the spoil and woody debris were in a wetland area. He wanted the material moved and the area which he described as “minimal” revegetated. He instructed that LCG engage its USCAE consultant to submit a plan. Evidently once Mr. Netherly returned to the USACE office in New Orleans, Mr. Brad Guarisco (“Guarisco”) was not satisfied with his findings and sent a scathing email to the Director of Public Works which in effect reversed Netherly’s directives. Guarisco had an “axe to grind” and was not satisfied that Netherly did not support his unhinged enforcement posture. I provided your investigator with a copy of this May 6, 2022 email at the June 20, 2024 meeting.

BACKGROUND

In the 1950s, the USACE conducted dredging along the Vermilion Bayou. The discarded sediment/dredging material commonly referred to as “spoil” was disposed of on the St. Martin Parish side of the Vermilion Bayou, in a fashion that would be a violation of numerous current federal and state laws that protect the environment and fragile ecosystem. The USACE didn’t care, they were looking for the easiest and cheapest way to dispose of the waste material from its dredging operation. The Corps did not intend to form any type of bank or levee. It was simply discarding sediment/dredging material on nearby property. It was discarded over 100 feet from the bank, the farthest the “drag-line” dredge could throw the unwanted sediment that was now waste produced as a result of the dredging of the channel of the Vermilion Bayou. The sediment/dredging material was incorrectly discarded in the location between the Vermilion Bayou and the Cypress Island Swampland. This waste material of disregarded sediment commonly referred to as “spoil” came to be known as the “spoil bank.” Historical evidence would indicate that prior to the discarding of the waste sediment (spoil), the area was a sensitive wetland. However, this was of no concern to the USACE in the 1950s; they discarded their waste and converted much of the area around the spoil bank to uplands, as spoil by its nature is a slush that oozes to areas in the vicinity of where it is discarded. Today, many

precautions to prevent the spread and run-off of spoil waste are employed; however, in the 1950s this was the least of their concern.

Over the ensuing years, this **discarded dredging waste** caused unintended consequences. Before the spoil was disposed of in the wetland swamp, flood waters flowed easily from the Vermilion Bayou into the Cypress Island Swamp and from the Cypress Island Swamp into the Vermilion Bayou. This naturally assisted with flood prevention in Lafayette Parish and St. Martin Parish. The Cypress Island Swamp functioned as a natural retention area for flood waters. The spoil material did not fully prevent the flow of flood water. Flood water continued to flow through breaks in the sediment/dredging material spoil bank. The rate of flow, however, was impeded and disrupted. Some experts have opined that the blocking of the water flow out of the swamp by the spoil banks was and is actually detrimental to the Cypress Island Swamp and has killed and continues to kill sensitive vegetation. If this detrimental disposal was done by a private actor and not the result of dumping by the Federal Government, in total disregard for the sensitive environment, rest assured that the Government would have long ago explored enforcement actions under the Resource Conservation and Recovery Act (“RCRA”) or other enforcement authority to have the Spoil Banks removed and the swampland remediated.

As a result of the improper dumping by the USACE, the natural flood prevention benefits of the Cypress Island Swamp were greatly diminished. Flood waters could now build up as they could not flow as quickly into and out of the Cypress Island Swamp. Even the breaks in the spoil bank are now upland, higher than original topography due to spoil oozing and settling. The Corps appeared to recognize that this spoil bank caused a problem, in 1995, the Corps issued a “Flood Control Reconnaissance Study.” This study found reduction of the height of the spoil bank would significantly assist flood prevention efforts in the region and provide relief to thousands of vulnerable residents during heavy rain and flood events. For decades, however, government officials largely allowed this proposed project to sit dormant. Recent flood events, specifically the historic 2016 flood, and a new administration brought renewed attention to flood prevention measures in Lafayette Parish and the whole Acadiana region. After the historic 2016 flood, the Corps and the University of Louisiana at Lafayette conducted a study (“Corps/UL study”) on effective flood prevention measures for the region. The Corps/UL study concluded that the most important measure to reduce flooding was to increase flood water storage and watershed retention capacity. The findings of the Corps/UL study could be implemented by executing the project outlined in the 1995 Corps Flood Control Reconnaissance Study. The Cypress Island Swamp could be restored as a natural

retention area for flood waters if the height of the spoil bank was reduced. This would significantly reduce flooding in Lafayette Parish and St. Martin Parish as a direct benefit to St. Martin Parish with a reduction of stormwater volume and with the timing of stormwater recession.

Lafayette Parish complied with all requirements and obtained all the information needed to apply to the Corps for a permit for the Original Spoil Bank Project. Accordingly, Lafayette Parish applied for a permit. While the Original Spoil Bank Project was based on a long-standing recommendation of the USACE, St. Martin Parish opposed the permit. St. Martin Parish’s opposition appeared to be largely due to misinformed public opinion rather than the merits of the Original Spoil Bank Project. In fact, the objection was, apparently, filed without St. Martin Parish ever seeing the models upon which the permit application was based. The St. Martin Parish President Chester Cedars (“Cedars”) proudly shared that he actually vetted the objection himself, despite having no formal background in the area (notably, St. Martin Parish refused the courtesy of providing a copy or even notifying Lafayette Parish of its objection to the permit). After learning of the objection, Lafayette Parish tried to work with Cedars to appease his concerns. The Parishes had multiple meetings, and Lafayette Parish shared its data. The data showed benefits to the entire region and no harm to St. Martin Parish, but Cedars could not be appeased. He

demanded more time and more studies. These meetings and demands for more time were likely just delay tactics. Cedars has since suggested he was opposed to any spoil bank project from the outset. This was unbeknownst to Lafayette Parish who was trying to work with St. Martin Parish and believed Cedars was proceeding in good faith while he was doing everything he could to stop Lafayette Parish from completing any spoil bank project.

When it became clear that Cedars was operating in bad faith, Lafayette Parish decided to revise the Original Spoil Bank Project and simply proceed. Lafayette Parish was not obligated to wait for Cedars to come up with some legal theory to tie this flood prevention effort up in a lengthy legal battle and further delay its completion. After further analysis and consultation with its experts, Lafayette Parish revised the Original Spoil Bank Project, (referred to herein as the “Revised Spoil Bank Project” or “the project”). The Revised Spoil Bank Project pared down the scope of the Original Spoil Bank Project. Additionally, it was determined that the work would now be completed in two phases. Phase 1 of the Revised Spoil Bank Project would be the reduction of the height of the spoil bank on the property that Lafayette Parish purchased a majority interest in St. Martin Parish. Phase 1 of the Revised Spoil Bank Project would be completed entirely in uplands areas. No wetlands would be disturbed, nor would any disposal or runoff be allowed in

navigable waters. Accordingly, Lafayette Parish determined, based on its extensive permitting history with the Corps, that Phase 1 of the Revised Spoil Bank Project did not fall within the jurisdiction of the Corps and thus did not require a permit. Phase 2 of the Revised Spoil Bank Project involved work on the Lafayette Parish property across the Vermilion Bayou from the spoil bank. It would be completed at a later date as it required a USACE permit. In February of 2022, Lafayette Parish executed Phase 1 of the Revised Spoil Bank Project.

Response to LLA Legal Findings

I. LLA Finding – Violation of Public Bid Law

Once allegations were made that LCG possibly violated the Public Bid Law, I requested a retrospective audit, review and legal opinion from LCG’s Public Bid Law expert Assistant City-Parish Attorney Denise Puente who had been engaged some fifteen years prior by the current City-Parish Attorney when he was City-Parish Attorney under the Durel administration. LCG had a long-standing relationship with its Public Bid Law expert that predated my appointment; I continued her engagement as she is known as one of the best attorneys in the state on the Public Bid Law. Department heads had direct access, and she regularly advised both the controller and the director of LCG’s purchasing department. This Retrospective Opinion was provided to you, LLA General Counsel Ms. Schaye, LLA Executive Counsel Mr.

Harris, and LLA Investigative Audit Manager Mr. Clapinski, on June 14, 2023, in the LCG Responses and Supporting Documentation to the 2021-2022 Audit under tab 11, pages 126-142. It is attached as Exhibit 1 for your ready review. The process of adding Amendment Number 1 to the Revised Spoil Bank Project to the as-needed excavation and disposal services contract was extensively investigated and reviewed. The LLA finding that the adding of “additional line items” was outside the scope of the public works contract limit and should have been let out for bid is incorrect. A complete and thorough review of the Puente opinion of September 7, 2022, contradicts this finding.

II. LLA Finding - Unauthorized Expenditure of Funds in St. Martin Parish

The LLA finding that LCG made unauthorized expenditures outside of its territorial limits is simply incorrect and contrary to law. LCG was fully within legal guidelines.¹ This power is expressly granted by Statute, specifically, Louisiana Revised Statute § 33:4621 which provides that “Municipalities and parishes may expropriate and otherwise acquire any private property, *within or without their limits*, for any of the purposes for which they are organized.”² This statute was referenced in LCG’s Responses and Supporting Documentation to the 2021-2022

¹ Exhibit 2 – Legal Opinion by Michael D. Hebert dated June 13, 2023.

² La. Rev. Stat. Ann. § 33:4621 (emphasis added).

Audit by Burton Kolder. By correspondence of June 14, 2023 to LLA General Counsel Ms. Schaye and LLA Executive Counsel Mr. Harris, I sent the Legal Opinion of Assistant City-Parish Attorney Hebert addressing this issue. See attached Exhibit 2. Furthermore, I personally delivered to you, LLA General Counsel Ms. Schaye, LLA Executive Counsel Mr. Harris, and LLA Investigative Audit Manager Mr. Clapinski, a complete bounded copy of this response at our meeting at the LLA offices on June 14, 2023 when we had the meeting to discuss Burton Kolder's disingenuous, unethical and misleading audit practices that deviated normal practices and statements he attributed to the Legislative Auditor on the record during the Joint LCG Council meeting on May 23, 2023: <https://video.ibm.com/recorded/132799870> and <https://video.ibm.com/recorded/132800181> broken up into two sections due to size.

There is no legal prohibition against a parish or municipality purchasing property outside of its territorial jurisdiction. Furthermore, there is no legal requirement that an ordinance must state that property is authorized to be purchased outside the territorial jurisdiction of a municipality or parish. The LCG Home Rule Charter does not require an ordinance that authorizes the purchase of property specifically state if the authorization applies to property to be acquired outside of the territorial boundaries of the City or Parish. The Charter does not prohibit the purchase of

property outside of territorial boundaries and instead confirms that City and Parish have all powers previously granted to municipalities and parishes under Louisiana law and the authority as set forth in La. R.S. 33:4621 as discussed above and the LCG Home Rule Charter, Sections:

1. Section 1-05: Except as otherwise provided by this charter the City-Parish Government shall continue to have all the powers, rights, privileges, immunities and authority heretofore possessed by the City of Lafayette and Lafayette Parish under the laws of the state. The government shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent with this charter as may be conferred on or granted to a local governmental subdivision by the constitution and general laws of the state, and more specifically, the government shall have and is hereby granted the right and authority to exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by this charter, or by general state law, or inconsistent with the constitution.
2. Section 1-06: The Lafayette City Council and the Lafayette Parish Council shall have the right, power and authority to pass all ordinances requisite or necessary to promote, protect and preserve the general welfare, safety, health, peace and good order of the City of Lafayette and the Parish of Lafayette respectively, including, but not by way of limitation, the right, power and authority to pass ordinances on all subject matters necessary, requisite or proper for the management of their respective affairs, and all other subject matter without exception, subject only to the limitation that the same shall not be inconsistent with this Charter, the constitution, or expressly denied by general law.
3. Section 8-09: This charter shall be liberally construed in aid of its declared intent which is to establish for the people of the City of Lafayette, the Parish of Lafayette, and the Lafayette City-Parish Consolidated Government effective home rule free from legislative interference as to the structure and organization of its local government, and with the power and

authority to manage its local affairs, all as contemplated and intended by the provisions of Article VI, Sections 5 and 6 of the constitution.

Louisiana Attorney General’s opinions are in accord, See: Atty. Gen. Op. 09-0302 (5/21/10) – a municipality may purchase land outside of its corporate limits for use as a municipal recreation facility and Atty. Gen. Op. 87-804 (1/4/88) – a municipality may allocate grant funds to a business that is not in the corporate limits of the municipality so long as “the use of the funds will ultimately benefit a legitimate public purpose of the granting town.”

With respect to the reference in the report to the Local Services Law provisions in Revised Statutes § 33:1322-1337, the clear language plainly establishes that the provisions are permissive, not mandatory. The language merely provides permissive authority for local governments to act jointly. For example, see, La. R.S. 33: 1324: “Any parish, municipality or political subdivision of the state, or any combination thereof, may make agreements between or among themselves to engage jointly in the construction, acquisition or improvement of any public project or improvement...”³ and La. R.S. 33:1324.1: “In order to effect economy of operation, any two or more political corporations or subdivisions may contract with each other to combine the use of administrative and operative personnel and

³ La. Rev. Stat. Ann. § 33:1324 (emphasis added).

equipment. . .”⁴ There was no need for LCG to enter into an intergovernmental agreement for the spoil bank removal with St. Martin Parish under the Local Services Law. St. Martin Parish did not make any contribution of funds, personnel, or resources to the spoil bank removal, nor was it envisioned that St. Martin Parish would do so. LCG had its own property rights and interests in the St. Martin Parish property upon which it conducted the spoil bank operations.

As demonstrated above, LCG was authorized to acquire those property interests by statute and did not need the consent of St. Martin Parish to do so. Thus, reliance upon the Local Services Law to impose and imply an obligation upon LCG to engage in an intergovernmental agreement with St. Martin Parish in order for LCG to work on its own property is incorrect and misplaced.

III. LLA Finding – Lack of Property Ownership and Consent

As stated in my opening paragraph and I will reiterate here, the project proceeded without my approval, my comments to your investigator were retrospective legal conclusions and arguments that are supported by the facts and law. LCG’s risks were limited and had the matter not been settled by the current administration, LCG would have been entitled to set off any damages for the

⁴ La. Rev. Stat. Ann. § 33:1324.1 (emphasis added).

inseparable improvements made to the land. When LCG was negotiating with the majority of the family members, who owned the immovable property, for a servitude to do the improvements of reducing the height of the spoil bank, the co-owner family members were encouraged by the improvement of reducing the height and flattening the top of the spoil bank as it had served as an impediment to their accessing the property and the old family camp on the property. There is no doubt that the reduction of the height of the spoil banks was an improvement to the land.

The LLA’s conclusion regarding alterations of co-owned property by the majority owner disregards the second paragraph of the cited article, Civil Code article 804.⁵ The failure of the report to discuss the second paragraph of article 804 is suspect. The LLA left out the portion of the authority, it was relying on for its conclusion, that specifically addresses alterations to the property that are improvements to the property consistent with the use of the property. The relevant provision of article 804 provides that the parties’ rights shall be determined in accordance with articles 496 and 497. While I am trying to avoid getting into the “weeds”, a full review of the relevant law is necessary considering the incorrect conclusion reached in the report. Article 496⁶ provides that the co-owner may not

⁵ La. Civ. Code art. § 804 (2025).

⁶ La. Civ. Code art. § 496 (2025).

demand demolition and the co-owner is bound to pay the cost of the improvements, the current value of the improvements, or the enhanced value of the land. Article 497⁷ provides guidance if the improvements are made by a bad faith possessor. Here there was co-ownership, not adverse possession. The improvements were consistent with the use of the property.

The reference and reliance on the payment of three times the fair market value of the property is inconsistent with the facts. LCG had an appraisal by a Jules LaCour, an MAI appraiser. When the value appeared high, I sent an email challenging the value as a value of full ownership and not a value for one-third interest. This communication is at tab 13, page 172 of the LCG Responses and Supporting Documentation to the Audit which was provided to you and your investigator on June 14, 2023. In this communication, the Appraiser answered that the value was for an undivided one-third interest. His communication was in error and resulted in a malpractice suit being filed in the 15th Judicial District Court, which the current administration dismissed prior to resolution by the judicial system. There was no intent by LCG to pay three times the property’s fair market value, it was the result of professional malpractice of the appraiser.

⁷ La. Civ. Code art. § 497 (2025).

Finally, the reference to the language of the USACE’s permit language in this section of the report is misplaced as the Revised Spoil Bank Project did not require a permit and as pointed out, the USACE permit is to ensure environmental compliance and not convey property rights. LCG would not rely on a USACE permit to convey property rights.

IV. LLA Finding – Violation of St. Martin Parish Ordinance

St. Martin Parish Violated its Home Rule Charter

On or about July 6, 2021, St. Martin Parish enacted Ordinance No. 21-07-1327, which amended/revised Chapter 14 of the St. Martin Parish Code of Ordinances by enacting Ordinance § 14-71 (entitled: “Council Approval of Development”) and revising Ordinance § 14-2 to change the definition of “levee.” St. Martin Parish is governed by a home rule charter. Per the home rule charter, the legislative power of St. Martin Parish is vested in the Parish Council.⁸ The Parish Council must pass an ordinance for its action to have the force of law.⁹ An existing ordinance can only be amended or repealed through a subsequently passed

⁸ SMPG Home Ruler Charter, Article II, § 2-01

⁹ SMPG Home Ruler Charter, Article II, § 2-11.

ordinance.¹⁰ The home rule charter provides exacting requirements for the enactment of an ordinance.

Article II, § 2-12 of the St. Martin Parish home rule charter provides:

- A. All proposed ordinances shall be introduced in writing at a meeting of the Council in the form required for adoption and, except for codifications, the operating budget and capital improvement budget, shall be confined to one subject expressed clearly in the title.
- B. All proposed ordinances shall be read by title when introduced and published in the official journal by title within fifteen (15) days after introduction, except that ordinances proposing amendments to the charter shall be published in full. Except as otherwise provided in the section on “Emergency Ordinances,” no ordinance shall be considered for final passage until at least three (3) weeks from the date of introduction and after a public hearing has been held on the ordinance.
- C. With the final approval of ordinances by the Parish President, or the Council in case of a veto by the Parish President, such enacted ordinances shall be published in full or in summary at the Council’s discretion in the official journal by the clerk of the Council within fifteen (15) days after adoption. Every enacted ordinance, unless it shall specify another date, shall become effective at the expiration of thirty (30) days after final adoption.

On June 1, 2021, at the end of the Regular Session of the St. Martin Parish Council, a motion to extend the agenda was made and carried to introduce Ordinance No. 21-07-1327 for publication.

¹⁰ SMPG Home Ruler Charter, Article II, § 2-11(A)(17).

Ordinance No. 21-07-1327 was introduced by St. Martin Parish Councilman Chris Tauzin. It read as follows:

An Ordinance to amend and/or revise Chapter 14, Article I of the St. Martin Parish Code of Ordinances by the enactment of Section 14-71 entitled, “Council Approval of Developments,” all relative to the regulation and permitting of developments, levee construction or removal, and other matters related thereto.

Introduction and publication of Ordinance No. 21-07-1327 was not on that day’s “Regular Meeting Agenda.” Louisiana Revised Statute § 42:19(A) requires public bodies, like the St. Martin Parish Council, to provide written public notice of their regular meetings along with the agenda of each meeting. The agenda cannot be changed less than twenty-four hours prior to the scheduled meeting. Louisiana Revised Statute § 42:19(A)(1)(a)(ii)(cc)¹¹ provides that a matter not placed on the agenda can be taken up provided that there is unanimous vote by the members present to take up the matter; however, prior to a vote to consider a matter not on the agenda, the public body must provide an opportunity for public comment on the vote. Shockingly, Section 2-07 (F) of the St. Martin Parish Home Rule Charter is more restrictive than § 42:19(A)(1)(a)(ii)(cc). Cedars violated his own Home Rule Charter while employing State Open Meetings Law to attempt to skirt other

¹¹ La. Rev. Stat. Ann. § 42:19(A)(1)(a)(ii)(cc) (2025).

requirements of the Home Rule Charter that prohibited Councilman Tauzin from adding an ordinance on the agenda at the end of the meeting, as was done.

The minutes of the June 1, 2021 Regular Session of the St. Martin Parish Council reveal a unanimous vote to extend the agenda to introduce and publish Ordinance No. 21-07-1327. The minutes, however, do not show that the public was provided an opportunity to comment prior to the vote. Accordingly, Ordinance No. 21-07-1327 was introduced and published in violation of the Louisiana Open Meetings Law. Article II, § 2-12(B) mandated that Ordinance No. 21-07-1327 be published in the official journal by title within fifteen (15) days of its introduction. The *Teche News* is the official journal of St. Martin Parish Government. On June 30, 2021—over 15 days after its introduction—St. Martin Parish published Ordinance No. 21-07-1327. Article II, § 2-12(B) provided that Ordinance No. 21-07-1327 could not be considered for final passage until at least three weeks from the date of introduction and after a public hearing.

St. Martin Parish posted written notice of the agenda for the July 6, 2021, Regular Meeting of the St. Martin Parish Council. The agenda provided Ordinance No. 21-07-1327 would be introduced for public hearing. The agenda provided the following text for Ordinance No. 21-07-1327:

An Ordinance to amend and/or revise Chapter 14, Article I of the St. Martin Parish Code of Ordinances by the enactment of Section 14-71

entitled, “Council Approval of Developments,” all relative to the regulation and permitting of developments, levee construction or removal, and other matters related thereto.

Ordinance No. 21-07-1327 as written on the agenda, however, was not what was presented at the Regular Meeting of the St. Martin Parish Council on July 6, 2021. On July 6, 2021, the St. Martin Parish Council voted on a revised ordinance that was never introduced or published in the *Teche News*. The St. Martin Parish Council voted on Ordinance No. 21-07-1327, which read as follows:

An ordinance to amend and/or revise Chapter 14, Article I of the St. Martin Parish Code of Ordinances by the enactment of 14-71 Entitled, “Council Approval of Developments”, and the revision of Section 14-2 all relative to the regulation and permitting of developments, levee construction or removal, the definition of levee, and other matters related thereto.¹²

St. Martin Parish was attempting to tag on an amendment to Ordinance § 14-2 to revise the definition of “levee” in the St. Martin Parish Code of Ordinances, Chapter 14—Flood Prevention.

Proposed Ordinance § 14-71 provided, in pertinent part:

Any development which includes the construction, alteration, or removal of any sort of ***levee or levee system*** as defined in this chapter, including, but not limited to, section 14-2, shall require a permit issued and approved by the floodplain administrator and specifically approved by majority vote of the St. Martin Parish Council. Upon request of the floodplain administrator or parish president, the request for such a

¹² The Ordinance erroneously refers to Article I of Chapter 14. Ordinance § 14-71 appears in Article III not Article I of Chapter 14.

permit shall be accompanied by an engineering study which details the impact of the said development inclusive of hydrological and hydraulic analysis. In those instances where the development includes the removal of a levee or levee system, the original purpose for the construction of the said levee or levee system shall be irrelevant.¹³

At the time, “levee” was defined in § 14-2 as follows:

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

The spoil bank did not meet this definition of “levee,” considering it was **not** a structure designed and constructed in accordance with sound engineering practices to contain, control or divert the flow of water, but rather simply constituted discarded sediment/dredging material. Accordingly, Ordinance § 14-71 would not apply to any spoil bank project under this definition of “levee.” The St. Martin Parish Council attempted a last-minute revision of Ordinance § 14-2 (without following the requirements of the home rule charter) to expand the definition of levee. The expanded definition of “levee” read as follows:

Levee means a manmade structure of any nature, earthen or otherwise, along any water body that contains, controls, diverts, detains, retains, or which aids in the containment, control, or diversion of the flow of water on or across any real estate.¹⁴

¹³ Emphasis added.

¹⁴ St. Martin Parish Council failed to simultaneously update their definition of levee system, which is still limited to levees “constructed and operated in accordance with sound engineering practices.” Ordinance § 14-2.

Not surprisingly, considering St. Martin Parish did not notify Lafayette Parish of their proposed ordinance, it received no public comment. It was then approved unanimously by the St. Martin Parish Council and was adopted on July 6, 2021.

Ordinance No. 21-07-1327 was in violation of the home rule charter. Ordinance No. 21-07-1327, as adopted, was never introduced and published in the *Teche News* in violation of Article II, § 2-12. As previously mentioned, even the prior version was not published in the *Teche News* within fifteen days of its introduction in violation of Article II, § 2-12. Ordinance No. 21-07-1327, as adopted, amended two different ordinances—it added § 14-71 to Chapter 14 of the St. Martin Parish Code of Ordinances, and it amended § 14-2 of Chapter 14 of the St. Martin Parish Code of Ordinances. Each act required a separate ordinance.¹⁵ Moreover, Article II, § 2-12(A) mandates that all proposed ordinances be “confined to one subject expressed clearly in the title.”

Lastly, Article II, § 2-12 mandates that all enacted ordinances be published in the official journal (*Teche News*) within fifteen days of adoption. Ordinance No. 21-07-1327 was not published in the *Teche News* until August 4, 2021, which was more than fifteen days after its adoption. Accordingly, Ordinance No. 21-07-1327 is void and unenforceable as it was enacted in violation of St. Martin Parish’s home rule

¹⁵ SMPG Home Ruler Charter, Article II, § 2-11(A)(17); Article II, § 2-12(A).

charter. Lafayette Parish clearly did not violate § 14-71 under the prior definition of “levee.” Lafayette Parish reduced the height of discarded spoil material. The spoil material was not “designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water.” Thus, Lafayette Parish did not construct, alter, or remove a “levee.”

Additionally, Ordinance § 14-2 and Ordinance § 14-71, as enacted/amended/revised by Ordinance No. 21-07-1327 are unconstitutional under the dormant Commerce Clause and are unconstitutionally vague.

No Authority to Legislate

St. Martin Parish claims Louisiana Revised Statute § 38:84 provided statutory authorization to enact Ordinance No. 21-07-1327. Louisiana Revised Statute § 38:84 only provides authorization to enact ordinances necessary for a municipality to qualify for the National Flood Insurance Act. Ordinance No. 21-07-1327 was not enacted so that St. Martin Parish could qualify for the National Flood Insurance Act. Rather, St. Martin Parish enacted the ordinance as part of its legal scheme to prevent Lafayette Parish from reducing the height of the spoil bank. Accordingly, Louisiana Revised Statute § 38:84 did not provide authority for St. Martin Parish to adopt Ordinance No. 21-07-1327.

St. Martin Parish’s express declaration that it was enacting Ordinance No. 21-07-1327 pursuant to Louisiana Revised Statute § 38:84 indicates St. Martin Parish was aware it did not have such authority under its home rule charter. The home rule charter provides authority to act only in areas of local affairs—not regional or statewide affairs. As such, Ordinance No. 21-07-1327 is void and unenforceable as St. Martin Parish was without authority to enact it.

No Violation of Ordinance § 14-71

Ordinance § 14-71, as plainly drafted, only requires a party to obtain a permit if the party is pursuing a project that involves the construction, alteration or removal of any “walled and roofed building . . . that is principally above ground” or of a “manufactured home.”¹⁶ Ordinance § 14-71 provides, in pertinent part:

Any *development* which includes the construction, alteration, or removal of any sort of *levee or levee system* as defined in this chapter, including, but not limited to, section 14-2, shall require a permit issued and approved by the floodplain administrator and specifically approved by majority vote of the St. Martin Parish Council. Upon request of the floodplain administrator or parish president, the request for such a permit shall be accompanied by an engineering study which details the impact of the said development inclusive of hydrological and hydraulic analysis. In those instances where the development includes the

¹⁶ “[W]here the words of a statute are clear and free from ambiguity, they are not to be ignored under the pretext of pursuing their spirit.” *State v. Watts*, 2009-0912 (La. App. 4 Cir. 6/16/10), 41 So. 3d 625, 635; La. Civ. Code art. 9 “When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature.”

removal of a levee or levee system, the original purpose for the construction of the said levee or levee system shall be irrelevant.¹⁷

Accordingly, Ordinance § 14-71 applies only to “developments” that involve construction, alteration or removal of a “levee or levee system.” St. Martin Parish

Ordinance § 14-2 defines a “development” as follows:

Development means any manmade change to improved and unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Ordinance § 14-2 also provides the definitions for a “levee” and a “levee system:”

Levee means a manmade structure of any nature, earthen or otherwise, along any water body that contains, controls, diverts, detains, retains, or which aids in the containment, control, or diversion of the flow of water on or across any real estate.

Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

As shown above, St. Martin Parish limits the definition of a levee to only refer to a “structure.” St. Martin Parish then provides the following definition for a structure:

¹⁷ Emphasis added.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Lafayette Parish did not construct, alter, or remove any walled or roofed building or manufactured home. Accordingly, Lafayette Parish did not violate Ordinance § 14-71. As stated in the BACKGROUND section above, the USACE never intended to form a levee or spoil bank. The Corps simply discarded sediment/dredging material. It was placed over 100 feet from the bank of the Vermilion Bayou. A broad definition of “levee” would conflict with St. Martin Parish’s definition of “levee system,” which is limited to “flood protection system[s]” that are “constructed and operated in accordance with sound engineering practices.”¹⁸ This narrower definition is consistent with the ordinary definition of “levee,” which is an “embankment designed to prevent the flooding of a river.”¹⁹ Again, the spoil bank was not designed to prevent flooding. In fact, it did not even prevent the flow of flood water. Flood water continued to flow through breaks in and over the sediment/dredging material. The rate of flow simply changed. If this pile of sediment/dredging material is considered a levee, then the scope of Ordinance § 14-71 is virtually unlimited as discussed below.

¹⁸ Ordinance § 14-2.

¹⁹ DICTIONARY.COM, <https://www.dictionary.com/browse/levee> (last visited September 1, 2022); MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/levee> (last visited September 1, 2022) (“[A]n embankment for preventing flooding.”).

Ordinances § 14-2 and § 14-71 are Unconstitutionally Vague

St. Martin Parish defined “levee” for the purposes of § 14-71 so broadly that it authorizes and even encourages arbitrary and discriminatory enforcement.

St. Martin Parish Ordinance § 14-2 defines “levee” as follows:

Levee means a manmade structure of any nature, earthen or otherwise, along any water body that contains, controls, diverts, detains, retains, or which aids in the containment, control, or diversion of the flow of water on or across any real estate.

Ordinance § 14-71 provides that a permit is necessary to alter, construct, or remove a “levee” and that “the original purpose for the construction of the said levee or levee system shall be irrelevant.” St. Martin Parish has defined “levee” for the purposes of § 14-71 so broadly that no resident of St. Martin Parish could remove a simple pile of dirt from their property without a permit if they lived on or near a body of water.

For example, consider a homeowner that lives along the bayou that desires to do landscaping. The homeowner purchases several yards of mulch, places it on his property but experiences a rain event prior to dispersing the mulch. The mulch would necessarily slow the flow of any rainwater that passed it. The mulch could then be considered a levee since it contains, controls, diverts, detains, retains, or aids in the containment, control or diversion of rainwater as it flows across the homeowner’s property into the bayou. This hypothetical homeowner would be required to obtain

a permit from St. Martin Parish prior to dispersing the mulch to complete his landscaping. (The homeowner would arguably have to obtain a permit prior to initially placing the mulch on his property). It would not matter that the landowner never intended to form a levee. St. Martin Parish has provided that “the original purpose for the construction of the said levee or levee system shall be irrelevant.”

Similarly, consider a homeowner that lives along the bayou and wants to place sandbags outside of his house in anticipation of rising flood waters from a hurricane. The sandbags would be considered a levee since they are being used to divert flood water from reaching the homeowner’s home. The homeowner would have to get a permit to both place the sandbags and remove the sandbags. Such a broad ordinance, especially considering its penal nature, invites arbitrary and discriminatory enforcement. Accordingly, Ordinances § 14-2 and § 14-71 are unconstitutionally vague.

Ordinances § 14-2 and § 14-71 Violate the Dormant Commerce Clause

St. Martin Parish attempts to regulate the waters of the Vermilion Bayou with Ordinance § 14-2 and § 14-71. St. Martin Parish believes the spoil bank prevents or slows flood waters from the Vermilion Bayou from entering into St. Martin Parish and instead causes the flood waters to flow into the neighboring areas like Lafayette Parish. Water is an article of commerce. The control of flood water is a national

problem. An ordinance that attempts to regulate commerce outside its boundaries, like Ordinance § 14-71, is *per se* invalid under the dormant Commerce Clause. Moreover, protectionist or isolationist legislation is *per se* invalid under the dormant Commerce Clause. A municipality cannot isolate itself from a common problem by restricting the movement of articles of commerce in interstate commerce. Ordinance § 14-71 is an attempt by St. Martin Parish to wall itself off from a common problem (flood waters) by restricting (spoil bank) the movement of commerce (water) in interstate commerce (Vermilion Bayou). St. Martin Parish would rather divert its fair share of the burden of dispersing flood water on its neighbors. Ordinance § 14-71 is blatant balkanization that is prohibited by the dormant Commerce Clause. Accordingly, Ordinance § 14-2 and § 14-71 are unconstitutional and unenforceable.

V. LLA FINDING – FAILURE TO OBTAIN REQUIRED FEDERAL PERMIT

As pointed out in the BACKGROUND section above, the Revised Spoil Bank Project did not require a federal permit. The construction of the project took place in uplands, not wetlands and was designed to avoid and prohibit discharge of any spoil in the Vermilion Bayou (waters of the United States). A retrospective review by highly specialized counsel engaged to respond to and address the allegations of Guarisco (which were not supported by Netherly) concluded that LCG did not

Michael J. "Mike" Waguespack, CPA
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violate the Clean Water Act nor the Rivers and Harbor Act. There has been no finding that LCG violated either act or Federal Regulation. Based on my information from credible sources, during a meeting at City-Parish Hall scheduled at the request of LCG, the EPA informed the Current Administration and City-Parish Attorney that it had completed its investigation and there would be no finding against LCG.

With king regards, I am,

Sincerely,

A handwritten signature in blue ink that reads "Gregory J. Logan". The signature is written in a cursive, flowing style.

Gregory J. Logan

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September 7, 2022

Attorney-Client Privilege

Via Email: glogan@lafayettela.gov

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RE: Public Bid Law Procedures re: LCG As Needed Excavation and Disposal Contract
Our File No.: 09113-50

I. Background

a. Summary

You have asked that we provide a legal opinion as to whether the first amendment to the “LCG As Needed Excavation and Disposal Contract” (the “Contract”) issued between the Lafayette City-Parish Consolidated Government (“LCG”) and Rigid Constructors, LLC (“Rigid”) was required to be let for public bid pursuant to Louisiana Public Bid Law, La. R.S. 38:2212, *et seq.* (the “Public Bid Law”) prior to issuance.

“As needed” contracts, such as the excavation contract at issue in this matter, are often used by public agencies and are allowable under Public Bid Law. They allow public agencies to have a contractor on hand to perform a certain work, such as excavation, as the issue arises or the work becomes necessary. The benefit is that the contractor is locked in for a price for the work and the

Mr. Gregory J. Logan
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public entity will not have to let the contract for public bid each time the work is needed. Instead, it can just issue a new task order under the original contract using the contract's pricing.

The issue raised herein is whether the first amendment to the Contract had to be let for public bid prior to issuance. The Public Bid Law allows for the issuance of change orders for public projects without the requirement that they be publicly bid so long as the change order is "inside" the scope of the original contract. If the change order is "outside" the scope of the original contract, then the change order must be publicly bid. Below is analysis of the Contract and whether the amendment was "inside" or "outside" the Contract, and thus whether it was required to be let for public bid.

b. Facts

i. The Contract

LCG advertised the Contract pursuant to La. R.S. 38:2212(G)(1) on November 3, November 7, and November 24, 2021.¹ The Notice to Bidders for the Contract required that bids be submitted by November 30, 2021. The bid opening was postponed to December 9, 2021 pursuant to Addendum no. 1 to the Contract.²

The Contract work entailed "furnishing labor, equipment, and superintendence to excavation and disposal throughout the Lafayette City-Parish, as necessary for the completion of" the Contract "on an 'as call, as needed' basis."³ The Special Conditions to the Contract outlined the scope of work as follows:

ARTICLE 2 - SCOPE OF PROJECT

The work to be performed under the various bid items of this contract, will be on an "as needed/on call" basis, and shall include, but may not be limited to, all labor, supervision, materials, equipment, and incidentals which may be required for the service needed to complete the proposed work (excavation, material disposal, contouring and final grading for proper drainage) unless otherwise specified for a particular bid item. It shall be the Contractor's responsibility to notify all the public utilities or other interested parties to make all necessary adjustments of public utility fixtures and appurtenances within or adjacent to the limits of construction. Unless otherwise specified, these adjustments are to be made by the Owner of the utilities.

¹ The Advertisement is attached hereto as Exhibit "A."

² A copy of Addendum 1 is attached hereto as Exhibit "B."

³ See the Notice to Bidders, which is included in the "Specifications and Contract Documents," attached hereto as exhibit "C."

Mr. Gregory J. Logan

September 7, 2022

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The Contract is a one (1) year contract with the option to renew for an additional two (2) years upon mutual agreement of the parties.⁴ The contractor is required to provide plans for each project site through a tasking order.⁵ Each tasking order must include the time for completion of the work and an estimated cost based on the bid prices.⁶ Before work can start and the notice to proceed be issued, LCG is required to request that the contractor prepare an estimated cost for the selected project.⁷ Importantly, the Contract notes that the contractor is responsible for mobilizing its equipment to and from the job site⁸ and any and all equipment and manpower necessary to complete the project.⁹

Pursuant to Addendum No. 2 to the Contract, additional Special Provisions were added allowing LCG to use Federal Funds for one or more Task Orders issued pursuant to the Contract.¹⁰ The additional Special Provisions included mandatory Federal solicitation and contract clauses that are required when Federal funds are used.

The Contract is a unit price contract, requiring each bidder to submit unit prices for each of the various line items in the contract which includes:¹¹

⁴ See Technical Specification, part 1, Exhibit C.

⁵ See Technical Specification, part 2, Exhibit C. A plan and a schedule were provided to LCG by Rigid prior to the execution of the Amendment.

⁶ *Id.*

⁷ See Technical Specification, part 4, Exhibit C. As of this time, we have been unable to locate the documentation regarding the estimate. As such, we can give no opinion as to whether these practices were properly followed.

⁸ See Technical Specification, part 7, contained in Exhibit C.

⁹ See Technical Specification, part 8, contained in Exhibit C.

¹⁰ A copy of Addendum no. 2 is attached hereto as Exhibit "D."

¹¹ See Louisiana Uniform Public Work Form, Unit Price Form, contained in Exhibit C.

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DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	EXCAVATION & DISPOSAL (NET SECTION)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
1	35,000	PER CUBIC YARD		
MOBILIZATION (EGRESS & INGRESS) TO BE INCLUDED IN PRICING				
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	CLEARING & DISPOSAL		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
2	25	PER ACRE		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	SODDING (INSTALLED)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
3	2500	PER SQUARE FOOT		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	HYDROSEEDING		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
4	10	PER ACRE		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	SILT FENCING (INSTALLED)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
5	5,000	PER LINEAR FOOT		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	HAY BALES (INSTALLED)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
6	50	PER EACH		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	MATERIAL RETAINED BY LCG (NET SECTION)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
7	10,000	PER CUBIC YARD		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	DELIVERY OF LCG RETAINED MATERIAL (>10 MILES) (NET SECTION)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
8	5,000	PER CUBIC YARD		
DESCRIPTION	<input checked="" type="checkbox"/> Base Bid or <input type="checkbox"/> Alt. #	DELIVERY OF LCG RETAINED MATERIAL (<10 MILES) (NET SECTION)		
REF. NO.	QUANTITY	UNIT OF MEASURE	UNIT PRICE	UNIT PRICE EXTENSION (Quantity times Unit Price)
9	5,000	PER CUBIC YARD		

The bid items were further clarified in the Technical Specifications which provide:¹²

Bid Items

1. Excavation & Disposal (Net Section)

a. The bid on Excavation & Disposal shall include all excavation, hauling and disposal of material, mobilization and all work associated with site preparation, establishing a haul road, construction entrance, SWPP Plan, and dewatering (if necessary). Final contouring, land leveling, and compacting excavated areas shall be provided as necessary to enable proper drainage maintenance, safe grass cutting, and erosion control (project site).

b. LCG will pay invoices based on quantity excavated and disposed with prior approval by the LCG Engineer/Administrator and upon inspection, the work meets LCG standards and therefore is deemed satisfactorily complete. Measurement for payment shall be net section.

¹² See Technical Specifications Bid Items, contained in Exhibit C.

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2. Clearing and Disposal

The bid on Clearing and Disposal shall include removal and hauling of all vegetation, root balls and root raking, and any other types of non-vegetative debris such as concrete, minor structures, and fencing. All disposal fees associated with material hauling from Clearing and Disposal will be paid by LCG with verified haul tickets. LCG will pay based on acreage cleared with prior approval by the LCG Engineer/Administrator and upon inspection, the work meets LCG standards and therefore is deemed satisfactorily complete.

The bids for the Contract were opened on December 9, 2021, and the following five (5) bids were received:¹³

COMPANY	Lic #	BB/CC	Addendum	Total Base Bid
Sartin Builders, LLC	58640	BB	1,2	\$594,250.00 corrected
Rigid Constructors, LLC	68214	BB	1,2	\$390,050.00
JC Construction, LLC	48502	BB	1,2	\$882,612.00
Construction Site Specialties, LLC	55275	BB	1,2	\$568,925.00
Southern Constructors, LLC	54206	BB	1,2	\$1,097,500.00

As is evident from the bid tabulation copied above, Rigid submitted the lowest bid in the amount of \$390,050.00.¹⁴ No deficiencies were noted in Rigid's bid and no other bidder filed a protest or challenged Rigid's bid. As such, on December 29, 2021, pursuant to the Public Bid Law, Rigid, as the lowest responsive responsible bidder, was awarded the Contract.¹⁵

¹³ A copy of the Bid Tabulation is attached hereto as Exhibit "E."

¹⁴ Rigid's Bid is attached hereto as Exhibit "F." For purposes of determining the "lowest bid" on unit price contracts, the bid amount is determined by calculating the individual unit prices times (x) the estimated quantity. However, the ultimate price paid by the public body may be substantially higher or lower based upon final quantities confirmed upon conclusion of the contract, including any change orders that may be issued during the term of the contract. If there is a discrepancy between the base bid total and the sum of the extended unit prices, the unit price bid shall govern. La. R.S. 38:2212(B)(3)(c).

¹⁵ The Contract is attached hereto as Exhibit "G." See *Broadmoor, LLC v. Ernest N. Morial New Orleans Exhibition Hall Authority*, 2004-0211 (La. 3/18/02), 867 So.2d 651; *New Orleans Rosenbush Claims Service, Inc. v. City of New Orleans*, 94-2223 (La. 4/10/95), 653 So.2d 538; *Concrete Busters of Louisiana, Inc. v. Board of Commissioners of Port of New Orleans*, 2010-1172 (La. App. 4 Cir. 2/2/11), 69 So.3d 484; *Enmon*, 76 So.3d 548.

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ii. The Amendment

On February 18, 2021, LCG issued the first amendment to the contract (the "Amendment").¹⁶ The Amendment was for "Excavation and Disposal services for Bayou Vermilion Flood Control Project (Spoil Bank Removal)." The scope of work included excavation and removal of soil on the banks on the St. Martin side of the bayou, which soil was then moved to the Lafayette side. All of the equipment necessary for the excavation was staged on the Lafayette side of the bayou. It is our understanding that all of the dirt excavated was from property purchased by LCG prior to the excavation work. Because the excavation was performed on the bayou banks, barges, temporary bridges, cranes, and other equipment not used for the prior excavation task orders performed pursuant to the Contract were needed. Further, this work was time sensitive. It had to be performed while the river was at its lowest point for the year and before a rain event occurred, which would raise the river to a depth making it impossible to perform the work. If the work was not performed during this time period, LCG would have to wait until the following year when the river hit its yearly low again. Thus, all of the work had to be performed within a 24-hour period.

Because of the time sensitive nature of the work, the Amendment included a special unit price for expedited mobilization. Further, it included unit prices for other portions of the work which were not part of the line items performed under the Contract. The following line items were added:

Bid Item	Description	Qty	Unit	Unit Price	TOTAL BID
1	Expedited Mobilization, 24-Hr Wor	1	ls	\$ 1,858,000.00	\$ 1,858,000
2	Tree Clearing (Dispose on-site)	12	ac	\$ 400.00	\$ 4,800
3	Excavation and Fill	26,000	cy	\$ 10.00	\$ 260,000
4	Barges/Temporary Bridges, Cranes, and Rigging	4	ea	\$ 298,000.00	\$ 1,192,000
5	Ramps	8	ea	\$ 29,750.00	\$ 238,000
6	Mechanics (Stand-by)	1	ls	\$ 117,000.00	\$ 117,000
7	Patrol Boats	3	ea	\$ 10,000.00	\$ 30,000
Total Base Bid					\$ 3,699,800

¹⁶ The Amendment is attached hereto as Exhibit "H."

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The total value of the Contract (based on unit prices) was therefore increased from the base Contract amount of \$390,050.00 to \$4,089,850.00. Prior to issuance of the Amendment, Rigid was asked to price the work and, upon acceptance of the price, the Amendment was issued. Pursuant to the Amendment, specific line items for additional services to be provided by Rigid were added to the Contract.

II. Analysis

a. “As Needed” Contracts

“As Needed” contracts, such as the current excavation Contract, are allowable under the Public Bid Law. For example, in *He/O Invs., LLC v. Par. of Jefferson Through Sheng*,¹⁷ Jefferson Parish awarded a publicly bid contract calling for landscaping work “as needed” on Parish properties over a 3-year period. Similar to this Contract, pricing of the work was done on a unit price basis.

Also, in *Data Management vs. Parish of St. John*,¹⁸ the Parish solicited bids for a public contract which called for drainage excavation work across the Parish on an as needed basis.¹⁹ The case itself dealt with a different issue, whether the Parish was entitled to reject a bid as non-responsive for failure of the contractor to comply with certain requirements related to licensing. However, it presents another example of a valid Public Bid Law contract which contemplated work on an as needed basis and illustrate that excavation contracts on an as needed basis are commonly used by public entities such as LCG.

b. Change Orders under Public Bid Law

i. Change Orders must be reduced to writing

Public Bid Law requires that change orders be reduced to writing and signed by both the contractor and by the public entity or its design representative.²⁰ The Amendment at issue was reduced to writing and executed by both parties.

ii. Certain change orders that must be recorded

The public entity is also required to record a change order in the mortgage records if it meets the following criteria:

¹⁷ 21-188 (La. App. 5 Cir. 11/24/21), 2021 WL 5831342.

¹⁸ 11-581 (La. App. 5 Cir. 2/14/12), 88 So. 3d 557, 561.

¹⁹ *Id.* at 561.

²⁰ La. R.S. 38:2212(M)(2).

Mr. Gregory J. Logan

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1. Any single change order which adds an amount of ten percent (10%) or more of the original contract amount AND which additional amount is at least \$10,000.00.²¹
2. All change orders to a contract aggregating to an amount of twenty percent (20%) or more of the original contract amount AND which additional amount is at least \$10,000.00.²²

Any change orders meeting the above requirements must be recorded within thirty (30) days of when such threshold is met. As such, Public Bid Law requires that the Amendment be recorded.

iii. Negotiating Change Orders

Where certain unit prices are contained in the initial contract, no deviations are allowed when negotiating change order costs.²³ Therefore, if the contract provides for a unit price for an item of work, any change order relating to a change in the quantity of that item of work must be calculated based on the original unit price.

Alternatively, if a change order involves any work for which no unit price was included in the original contract (which is the case in this matter), the change order must be negotiated in the best interest of the public entity.²⁴ Further, each change order is required to be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit, and overhead.²⁵

The additional unit prices added by the Amendment were for new items of work, thus new amounts were acceptable. As noted above, mobilization was required to be included in the contractor's price. However, the Amendment added a line item for Expedited Mobilization. Nevertheless, mobilization on an expedited basis to perform work within a 24-hour time period with major equipment that was not included in the original Contract should be considered sufficiently different from general mobilization that a different price (and thus a change order) is justifiable.

iv. Allowable Change Orders

As the Contract itself is valid, it must be determined whether the Amendment needed to be let for public bid. A change order is defined under the Public Bid Law as follows:

²¹ La. R.S. 38:2222.

²² La. R.S. 38:2222.

²³ La. R.S. 38:2212(M)(5).

²⁴ La. R.S. 38:2212(M)(5). No evaluation has been made as to whether the costs incurred were in the best interest of LCG and therefore this opinion does not address this issue.

²⁵ La. R.S. 38:2212(M)(5).

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[A]ny contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract, which authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work.²⁶

There are two (2) types of change orders:

1. Change Order Outside the Scope of the Contract – A change order which alters the nature of the thing to be constructed or which is not an integral part of the project objective.²⁷
2. Change Order Within the Scope of the Contract – A change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.²⁸

The key distinction between the two (2) types of change orders is that a change order outside the scope of the contract is required to be advertised and let out for public bid, unless the change order is below the “contract limit” as defined under the Public Bid Law.²⁹ The “contract limit” under the Public Bid Law is \$250,000.00³⁰ inclusive of labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent.

Because the value of the Amendment is greater than \$250,000, a determination must be made as to whether it is “within” the scope of the contract or “outside” the scope of the contract.

v. Is the Amendment “Inside” or “Outside” the scope of the Contract?

A determination of whether a change order is “inside” or “outside” the scope of a contract typically includes “an evaluation of the project description that was used in the legal advertisement for the work and in the introduction of the specifications” and whether the original contract as drafted contemplated or anticipated additional work.³¹ The Contract’s scope of work makes it clear that, at its heart, the work to be performed is excavation and removal. The work to be performed in the Amendment is not different than the Contract work, it is just being performed under a more stringent schedule and in a different, more difficult environment, which required different equipment.

²⁶ La. R.S. 38:2211(3)(a).

²⁷ La. R.S. 38:2211(3)(b).

²⁸ La. R.S. 38:2211(3)(c).

²⁹ La. R.S. 38:2212(M)(4).

³⁰ La. R.S. 38:2212(C)(1). Note that this subsection provides that the “contract limit” is adjusted annually by the Office of Facility Planning and Control on February 1st of each year to account for increases in the Consumer Price Index.

³¹ La. Att’y Gen. Op. No. 03-0263 (Aug. 6, 2003).

Mr. Gregory J. Logan
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The Attorney General has noted that “[i]n order for the change order to be within the scope of the contract, it must not alter the nature of the thing to be constructed and must be an integral part of the project objective.”³² The Amendment did not change the nature of the type of work being performed and had the same objective as the work contemplated under the original Contract – excavation. This all supports a finding that the Amendment was within the scope of the Contract.

One complicating factor is that part of the work was performed in St. Martin Parish and the Notice to Bidders notes that the work is to be performed “throughout the Lafayette City-Parish.”³³ One Attorney General Opinion has found that exceeding the geographical scope of the contract can render a change order outside the scope of the contract. There, the Policy Jury accepted a low bid on a project to furnish an asphalt overlay of a highway.³⁴ The policy jury subsequently sought to expand the project to construct a soil, cement and asphalt overlay on a nearby roadway. In opining that the proposed change order was outside the scope of the initial contract, the Attorney General noted as follows:

A determination must first be made as to whether the changes in the work, specifically the asphalt overlay on Kathy Road, would be within the scope of the preexisting contract to overlay Broussard Road. Typically this would include an evaluation of the project description that was used in the legal advertisement for the work and in the introduction of the specifications. A review of the advertisement for the original project shows that the project was limited to the asphalt overlay of Broussard Road and nothing more. The original contract did not contemplate the possibility that additional roads would be added or included in the overall project.

It is therefore the opinion of this office that the proposed addition to the existing public works contract is outside the scope of the contract and cannot be the subject of a change order.”

However, here, Lafayette purchased the properties before it performed the excavation work. It therefore owned the property. It is unclear what effect this would have on a determination of the scope of the change order. While the property became owned by Lafayette, it would still not appear to be within the “Lafayette-City Parish.”

One could also argue that the price of the Amendment, which is ten times that of the Contract, could, in itself, render the Amendment outside the scope of the Contract. However, that argument is not supported by interpretations of the statute at issue. For example, La. R.S. 38:2212 used to place a limit on how much a change order could be in relation to the original contract price in order to

³² La. Att’y Gen. Op. No. 21-0059 (July 1, 2021).

³³ See the Notice to Bidders, Exhibit C.

³⁴ La. Att’y Gen. Op. No. 03-0263 (August 6, 2003).

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qualify as a “within the scope” change order, which limit was repealed in 1980. However, an Attorney General opinion issued several years after the repeal observed the following:

The fact that the additional cost of adding alternate proposals is considerable does not necessarily require that the additional work be readvertised for bidding. The legislative history of R.S. 38:2212 shows that the cost of the additional work is not controlling if the work performed by the change order is within the scope of the contract. In 1979, the statute was amended by Act 795 to add the following provision:

“Change orders within the scope of a contract, in the aggregate, which exceeds 10% of the original contract agreement or \$500,000, whichever is less, shall be let out for public bid as provided by this Part.”

This 10% limitation on change orders was repealed by Act 329 of 1980, the first year after it had been put into practice. Consequently, there is no provision in the law which limits the dollar amount of additional work to be done by way of a change order if the work is within the scope of the contract.³⁵

Another Attorney General Opinion is also instructive.³⁶ It concerned a contract entered into between public body and the contractor for work to be performed in connection with the Ridge Wood sewerage system. The price of the original contract was \$479,000. After the work had commenced, HUD granted the City an additional \$679,502 for very significant additions. The City requested a legal opinion as to whether it could issue a change order to the contract to add this additional work in the amount of \$679,502. The Attorney General concluded that a change order could be issued because the change work was “within the scope” of the original contract relying upon the definition found in La. R.S. 38:2211A(4).

III. Conclusion

Based on the foregoing, a strong argument can be made that the *type* of work performed pursuant to the Amendment was within the scope of the Contract. The work performed was the same type of work that was contemplated by the Contract. The fact that the price increased by such a large amount and different equipment was used does not change this.

However, the fact that the work was not performed in the Laying-City Parish strongly favors a finding that the work was outside the scope of the Contract. The Notice to Bidders makes clear

³⁵ La. Att’y Gen. Op. No. 83-442 (May 18, 1983) (emphasis added).

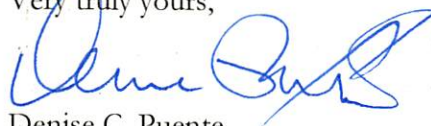
³⁶ See La. Att’y. Gen. Op. No. 81-1028 (Sept. 25, 1981).

Mr. Gregory J. Logan
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that the work anticipated to be performed was only in Lafayette-City Parish and not other locations outside the Parish.³⁷ It specifically defines the work to be performed under the Contract as “furnishing labor, equipment, and superintendent to excavation and disposal **throughout the Lafayette City-Parish.**”³⁸ As such, the Contract did not anticipate or contemplate work outside that parish.³⁹ Despite this, the excavation work performed pursuant to the Amendment was performed in St. Martin Parish.⁴⁰ It is important to note that the work performed in St. Martin Parish was not merely work ancillary to or supporting the main work objective. Rather, the work performed was the actual excavation work, which is the very purpose of the Contract. As such, we conclude that the Amendment was outside the scope of the Contract and should have been let for public bid prior to award.

This Opinion addresses only whether the Amendment was properly issued pursuant to the Public Bid Law. It does not address any other issues, such as whether the price negotiated was in the best interest of the parish or whether additional permits were required or obtained. Further, if any facts outlined above are incorrect, it could affect our opinion, which could then change.

Very truly yours,



Denise C. Puente

³⁷ See the Notice to Bidders, contained in Exhibit C.

³⁸ *Id.* (emphasis added).

³⁹ See La. Att’y Gen. Op. No. 03-0263 (Aug. 6, 2003).

⁴⁰ While we understand that the properties where the excavation took place were purchased by LCG prior to the excavation, it is our understanding that despite the fact that LCG owned them, they were still a part of St. Martin Parish.



Gregory J. Logan
City-Parish Attorney

June 14, 2023

Jenifer Schaye and Roger Harris
Louisiana Legislative Auditor
1600 N. 3rd St.
Baton Rouge, LA 70802

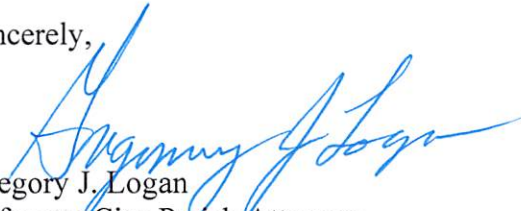
Via Email Only

Dear Jenifer and Roger:

In accordance with my letter to Jenifer yesterday and our meeting earlier today, being transmitted herewith, please find the supplemental written legal opinion of Michael D. Hebert regarding Audit Findings 2022-012 and 2022-013. During his Council presentation, Michael Hebert presented this information; however, this is no reference to this material under tabs 12 or 13 in the binder.

If you have any additional questions, please let me know.

Sincerely,


Gregory J. Logan
Lafayette City-Parish Attorney

GJL/kap
Attachment

cc: Lafayette City Council
Lafayette Parish Council

t: 337.406.9685 / glogan@LafayetteLa.gov

Exhibit 2



Attorneys and Counselors at Law
Post Office Drawer 52085, Lafayette, Louisiana 70505
201 Rue Beauregard, Lafayette, Louisiana 70508
Phone: 337.233.1987 Fax: 337.235.1748

Michael D. Hebert
Email: mhebert@lawbecker.com

June 13, 2023

Gregory J. Logan
Lafayette City-Parish Attorney
700 Jefferson Street
Lafayette, Louisiana 70501

Re: Response to Audit Findings

Dear Greg:

You have asked me for a written opinion tracking the substance of my remarks at the May 23, 2023 joint City and Parish Council meetings in which the findings of the LCG Fiscal Year 2021-2022 audit were presented. My remarks at that meeting were primarily addressed to two specific audit findings that were premised upon legal conclusions:

- Finding 2022-012, regarding whether there was sufficient legal authority for the acquisition of property for the Bayou Vermilion Spoil Bank Project.
- Finding 2022-013, regarding the purchase price for acquiring two tracts of land for the Bayou Vermilion Spoil Bank Project.

With regard to Finding 2022-013, I had previously provided you with a memorandum dated January 18, 2023 containing the results of my research and investigation of this issue. I utilized that memorandum in my remarks at the joint Council meeting of May 23 and do not recite that memorandum again in this letter. A copy of that memorandum is attached.

With regard to Finding 2022-012, the claim of the auditor appeared to be premised upon three incorrect legal conclusions: (1) there is no authority under Louisiana law for the City or Parish to acquire property outside of their respective territorial jurisdictions; (2) there was no ordinance that authorized the acquisition; and (3) any ordinance that would authorize such an acquisition would have to specifically state that it sought to authorize the acquisition of property in another territorial jurisdiction.

Additionally, the auditor relied upon a clerical error in an internal document – essentially a cover letter or memo – seeking a check for the acquisition of the subject property in which a clerk referred to the wrong ordinance as being the authority for the acquisition. The wrong ordinance is Ordinance PO-035-2021. Actually, two pages after the cover letter, one of the two correct ordinances that authorizes the transaction – Ordinance CO-062-2021 – is attached.

Nevertheless, the auditor's conclusion is that "The Government purchased 41 acres in St. Martin parish that referenced approval through Parish Ordinance PO-035-2021; however, the geographical project limits identified in Exhibit A of this ordinance does not appear to include St. Martin Parish."

LCG never contended that authority for the acquisition of the subject property was established by Ordinance PO-035-2021, which clearly pertains to a different project. The clerical error in inadvertently referring to the wrong ordinance in an internal request for a check does not create a legal issue.

In reality, the authorization for acquisition of the subject property was granted by two different ordinances, neither of which restrict the geographical limits of the authorization to Lafayette Parish:

(1) Ordinance JO-080-2020, which declared the "Stormwater Management Project" a public necessity, under the following terms:

(a) the project was stated in the ordinance to "primarily entail, but may not be entirely limited to, determining and evaluating locations for and the design and construction of detention ponds along the following channels: . . . Bayou Vermilion (W-34);" and

(b) the project was also defined by geographic area with an attached map that included, among other things, the entirety of the Bayou Vermilion watershed (shown as "W-34" on that map); and

(c) in Section 2 of the ordinance, both the City and Parish Councils explicitly authorized the Mayor-President "to acquire such land, immovable property, rights-of-way, servitudes, or other property rights as are determined to be necessary under good engineering standards to provide for the design and construction of said project, and he is authorized to do so on an amicable basis or by the proper use of the power of expropriation granted to municipalities under applicable state law. In pursuing said land, immovable property, right-of-way acquisitions, he is authorized to acquire said land, immovable property, right-of-way and to settle the matters thus presented, on such terms and conditions as he shall deem proper and in the best interest of the Lafayette City-Parish Consolidated Government."

and

(2) Ordinance CO-062-2021, which among other things, amended the FY 20/21 operating and capital budgets to appropriate \$3,850,000 for the "Bayou Vermilion Spoil Bank Removal Project." This ordinance triggered the additional authorization of Section 3-09(A)(5) of the Lafayette City-Parish Consolidated Government Home Rule Charter, which authorizes the Mayor-President to "sign contracts for projects. . . specifically identified in the approved operating and capital improvement budgets or as specifically

identified by ordinance.” Clearly an agreement for the purchase of property is a “contract,” and clearly, the “project” and “purpose” were “specifically identified in Ordinance CO-062-2021.

Thus, LCG is presented with the situation in which it has two somewhat overlapping ordinances that both authorize the purchase of the subject property, even though either one would have been sufficient. Argument was raised in some of the following up questions to management’s response that seemed to attempt to minimize the legal effect of Ordinance CO-062-2021 because it is a “budget revision.” But a revision to the budget is part of the budget nevertheless, and Section 3-09(A)(5) of the Charter does not distinguish between a “project” that is in the “approved operating and capital improvement budgets” because it was in the initially adopted budget or because it is later inserted into the budget by revision. Further, the “Bayou Vermilion Spoil Bank Removal Project” was specifically identified by name in Ordinance CO-062-2021, removing any doubt and ambiguity that might be attempted to be raised with regard to the use of the overlapping term “Stormwater Management Project” in Ordinance JO-080-2020.

With regard to the auditor’s implication in this finding that there is no legal authority for the City or Parish to acquire property outside of their territorial limits, Louisiana law expressly provides to the contrary. La. R.S. 33:4621 provides that “Municipalities and parishes may expropriate and otherwise acquire any private property, within or without their limits, for any of the purposes for which they are organized” (emphasis added).”

The Attorney General has also acknowledged this authority. For example, in Atty. Gen. Op. 09-0302 (5/21/10), the Attorney General opined that a municipality may purchase land outside of its corporate limits for use as a municipal recreation facility. Similarly, in Atty. Gen. Op. 87-804 (1/4/88) the Attorney General opined that a municipality may allocate grant funds to a business that is not in the corporate limits of the municipality so long as “the use of the funds will ultimately benefit a legitimate public purpose of the granting town.”

The Lafayette City-Parish Consolidated Government Home Rule Charter (the “Charter”) does not in any manner limit the general extraterritorial authority of either the City of Lafayette or the Parish of Lafayette to acquire property. To the contrary, the Charter expansively grants all existing municipal and parish powers to the City and Parish of Lafayette in the following terms:

Section 1-05: Except as otherwise provided by this charter the City-Parish Government shall continue to have all the powers, rights, privileges, immunities and authority heretofore possessed by the City of Lafayette and Lafayette Parish under the laws of the state. The government shall have and exercise such other powers, rights, privileges, immunities, authority and functions not inconsistent with this charter as may be conferred on or granted to a local governmental subdivision by the constitution and general laws of the state, and more specifically, the government shall have and is hereby granted the right and authority to exercise any power and perform any function necessary, requisite or proper for the management of its affairs, not denied by this charter, or by general state law, or inconsistent with the constitution.

Section 1-06: The Lafayette City Council and the Lafayette Parish Council shall have the right, power and authority to pass all ordinances requisite or necessary to promote, protect and preserve the general welfare, safety, health, peace and good order of the City of Lafayette and the Parish of Lafayette respectively, including, but not by way of limitation, the right, power and authority to pass ordinances on all subject matters necessary, requisite or proper for the management of their respective affairs, and all other subject matter without exception, subject only to the limitation that the same shall not be inconsistent with this Charter, the constitution, or expressly denied by general law.

Section 8-09: This charter shall be liberally construed in aid of its declared intent which is to establish for the people of the City of Lafayette, the Parish of Lafayette, and the Lafayette City-Parish Consolidated Government effective home rule free from legislative interference as to the structure and organization of its local government, and with the power and authority to manage its local affairs, all as contemplated and intended by the provisions of Article VI, Sections 5 and 6 of the constitution.

It is noteworthy that the acquisitions that are the subject of this finding are not the first time that either the City or the Parish has acquired real property outside of its territorial boundaries. In 2011, the Lafayette City-Parish Council and the Lafayette Public Utilities Authority authorized the purchase of property outside of the territorial boundaries of the City of Lafayette for the construction of the La Neuville Substation. This purchase appears as Act No. 2011-2769 in the conveyance records of the Lafayette Parish Clerk of Court. This purchase was authorized by the Lafayette City-Parish Council, acting as the governing authority for the City of Lafayette, in Ordinance O-157-2009. Just like the ordinances at issue in the present situation, Ordinance O-157-2009 does not state one way or the other whether the property authorized to be acquired was outside of the Lafayette city limits. Similarly, Ordinance O-157-2009 does not give any special authorization or contain any special terms merely because the property sought to be acquired was outside the Lafayette city limits.

In the FYE 10/31/2011 audit, the first audit after the acquisition of the La Neuville Substation property, there is no audit finding regarding the use of the very same authority that has now prompted the current audit finding. There is no challenge to the fact that the property acquired by the City was outside the City, nor is there any challenge to the silence of the enabling ordinance as to the location of the property authorized to be acquired.

Taking all of this into account, no legitimate legal issue is raised regarding the purported lack of authority to acquire the subject property. There is no legal basis to conclude that the City or Parish have no authority to acquire property outside of their territorial limits, and there is no legal basis to conclude that any ordinance that purports to authorize such an acquisition must explicitly state that the property sought to be acquired is outside of their territorial limits. Instead, there are two ordinances that authorize the acquisitions, and those ordinances are permissible both under the Charter and under the explicit provisions of La. R.S. 33:4621.

Gregory J. Logan
June 13, 2023
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I trust that the foregoing adequately addresses your request. If I can provide further information or assistance, please feel free to contact me.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "M. Hebert", with a stylized flourish at the end.

Michael D. Hebert

MDH/ljs
Attachment