

COMITE RIVER DIVERSION CANAL PROJECT

STATUS AND REASONS FOR DELAYS



PERFORMANCE AUDIT SERVICES
ISSUED JANUARY 18, 2017

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LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

January 18, 2017

The Honorable John A. Alario, Jr.,
President of the Senate
The Honorable Taylor F. Barras,
Speaker of the House of Representatives

Dear Senator Alario and Representative Barras:

This report provides the results of our evaluation of the status and reasons for delays on the Comite River Diversion Canal Project.

The report contains our findings, conclusions, and recommendations. Appendix A contains the Amite River Basin Commission and the Louisiana Department of Transportation and Development's responses to this report. I hope this report will benefit you in your legislative decision-making process.

We would like to express our appreciation to the management and staff of the United States Army Corps of Engineers, Louisiana Department of Transportation and Development, the Amite River Basin Commission, and East Baton Rouge Parish for their assistance during this report.

Sincerely,

Daryl G. Purpera, CPA, CFE
Legislative Auditor

DGP/aa

COMITE PROJECT STATUS

Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



Comite River Diversion Canal Project Status and Reasons for Delays

January 2017

Audit Control # 40160016

Introduction

We evaluated the status of and reasons for delays with the Comite River Diversion Canal Project (Comite Project). We conducted this review because approximately \$117 million¹ has been spent on the project, and only one of the 27 construction components has been completed. In addition, the project was originally estimated to be completed in 2012 at a cost of \$153 million. If all funding were received today, current estimates indicate that the project would take two to three years to complete² and may cost as much as \$313 million. Funding for the project comes from a combination of federal, state, and local sources.

Purpose of Project. The purpose of the Comite Project is to provide flood protection for the Lower Comite and Lower Amite River Basins. This project was authorized in 1992 in response to the Great Flood of 1983 that affected the Greater Baton Rouge area and caused an estimated \$344 million in damage to parishes within the area. This 12-mile long diversion channel is expected to reduce flood stages at areas within these basins by diverting water from the Comite River and three bayous³ to the Mississippi River. Although the canal will be located north of the city of Baker and south of the city of Zachary, it is anticipated that other areas, such as Central, Denham Springs, and Port Vincent, would also benefit. Appendix C shows a map of the project.

According to a 1991 feasibility study by the United States Army Corps of Engineers (Corps), flood stages will be reduced at all points along the benefit area, although the benefit decreases at locations further away from the diversion canal. As Exhibit 1 shows, the benefit achieved at the Comite River at White Bayou, the closest to the canal, is much greater than the benefit received at the Amite River at Port Vincent, which is the furthest away. Appendix D shows the projected flood elevation reduction at all gauges along the benefit area.

Exhibit 1 Flood Stage Reduction at First and Last Gauge		
Water Gauge	Flood Type	Reduction
Comite River at White Bayou	10-year flood	7.2 feet
	100-year flood*	5.5 feet
Amite River at Port Vincent	10-year flood	0.8 feet
	100-year flood	0.6 feet

* A 100-year flood was the largest flood event used in the study.
Source: Prepared by legislative auditor's staff using information from the Corps.

¹ The Corps recognizes approximately \$100 million being spent on the project because it only acknowledges Corps and DOTD spending, not ARBC's, as per the agreement signed in 2001.

² The project could only be completed in two to three years if all funding for the project was immediately received and work began on the entire project simultaneously.

³ These bayous include Bayou Baton Rouge, Cypress Bayou, and White Bayou.

Role of Agencies Involved. There are four agencies involved in the Comite project, including the Amite River Basin Commission (ARBC), the Corps, the Louisiana Department of Transportation and Development (DOTD), and East Baton Rouge Parish (EBR). Exhibit 2 shows the primary role of each agency. The Corps is the lead federal sponsor, while DOTD is the lead state sponsor.

Exhibit 2 Agency Responsibilities		
Agency	Type	Responsibility
ARBC	Non-Federal	Floodplain Management* and Hold Title to Lands
Corps	Federal	Design and Construction
DOTD	Non-Federal	Acquisitions of Lands, Easements, Rights of Way, Relocations, and Disposals and Finance Cost-Share
EBR	Non-Federal	Cost of Operations and Maintenance of Canal and Mitigation Lands** and Final Title to Lands
* Floodplain management aims to both reduce flood loss and protect the natural resources and functions of floodplains.		
** Mitigation land is purchased to restore, establish, enhance, and/or preserve wetlands, streams, or other aquatic resources specifically to offset project impacts.		
Source: Prepared by legislative auditor's staff using information from ARBC, the Corps, DOTD, and EBR.		

Comite Project Funding and Expenditures. Project funding comes from a combination of federal, state, and local sources. The Corps and DOTD entered into a cost-share agreement that requires DOTD to acquire all Lands, Easements, Right of Ways, Relocations, and Diversions (LERRDs) and to contribute a minimum of 25% and a maximum of 50% of the total project costs, including a cash contribution equal to 5% of total project costs. After this agreement was reached, a separate agreement was made between DOTD and ARBC in 2001 where ARBC agreed to transfer any funds raised by a property tax millage or through the capital outlay process to DOTD to be used to help satisfy DOTD's share of the project. The majority of ARBC funds come from a millage dedicated solely to the Comite Project paid by citizens who reside in the benefit area. This 10-year, 3-mill ad-valorem tax was passed with 67%⁴ of the vote in 2000 and renewed with 52%⁵ of the vote in 2010 at 10 years, 2.65 mills.⁶ All citizens in the benefit areas in Ascension, East Baton Rouge, and Livingston parishes pay the same millage even though some areas will benefit more than others. Appendix E shows the amount of funding raised by this local tax, as well as all other funding sources, throughout the years.

As of September 20, 2016, there was approximately \$133,439,096 in total funding designated for the project, with \$117,260,135 (88%) spent and \$16,178,961 (12%) not spent. The unspent funds are held by ARBC from the local taxes paid by citizens in the benefit area and by DOTD from capital outlay funding received in previous years. See Appendix F for expenditures by category, by agency. While \$102,961,486 (87.8%) has been spent on design, engineering, construction, and land, non-engineering employee time totaled \$14,298,649

⁴ This vote was passed with 8,123 of 12,059 voters approving the millage.

⁵ This vote was passed with 18,069 of 34,548 voters approving the millage.

⁶ The millage rate was lowered due to an increase in the tax base (i.e. number of residents paying property taxes).

(12.2%). Costs for employee time other than engineering as a percentage of total funding spent by agency are 3% for DOTD, 10.4% for ARBC, and 12.6% for the Corps.

The objective of our audit was to evaluate the status of and reasons for delays with the Comite River Diversion Canal Project. The issues we identified are listed on the following page and discussed in detail throughout the remainder of the report. Appendix A contains DOTD and ARBC's responses to the report, and Appendix B provides our scope and methodology. Appendix C shows the location of the Comite Project and the components associated with it, Appendix D shows the estimated stage reductions as a result of the finished canal, Appendix E shows the breakdown of funding received by each funding source by fiscal year, Appendix F shows the expenditures, by category and agency, and Appendix G shows the locations of the five functional elements.

Objective: To evaluate the status of and reasons for delays with the Comite River Diversion Canal Project.

Although approximately \$117 million has been spent from federal, state, and local funding sources, only one of the 27 construction components of the project has been completed. In addition, although the project was originally estimated to be completed in 2012 at a cost of \$153 million, current estimates by the Corps indicate that the project will take two to three years to complete, and the cost may be as high as \$313 million, which is seven years later than estimated and \$160 million over initial Congressional authorization. However, completion of the project is dependent upon funding, which has been insufficient and inconsistent since the project commenced. We identified the following issues as reasons for delays with the Comite Project:

- **A lack of consistent and sufficient funding for the Corps is the primary reason that the project has not moved forward, resulting in little construction progress since 2000.** Only one of the 27 construction components of the project – the Lilly Bayou control structure – has been completed. Also, federal funds not spent in the year in which they are appropriated can be reprogrammed,⁷ and more than \$200 million in federal and state funds are still needed to complete the project.
- **Insufficient purchasing of mitigation land by the Corps when it was acting on DOTD’s behalf for Lands, Easements, Right of Ways, Relocations, and Diversions (LERRDs) caused delays in the project, which is the reason DOTD took back LERRDs.** In addition, state legislation in 2010 prohibited the expropriation of land for the Comite Project, which resulted in the Corps having to identify new mitigation land.
- **The current construction delay is the U.S. Highway 61 bridge construction and the associated utility relocations that must take place.** DOTD must relocate utilities, such as pipelines and telecommunications lines, at this location prior to bridge construction; however, DOTD stated that it is concerned that no federal funding will be approved for the project and money spent to relocate utilities will therefore be wasted.

In addition, stakeholders cited the need for a more comprehensive plan to help alleviate flooding issues along the entire Comite and Lower Amite River Basins. These issues are summarized in more detail on the pages that follow.

⁷ Reprogramming is the shifting of resources within an appropriation account from one program, project, or activity to another, to use them for purposes other than those outlined in the budget justifications or expressed as Congressional intent in the enacted appropriations bill and Committee reports.

A lack of consistent and sufficient funding for the Corps is the primary reason that the project has not moved forward, resulting in little construction progress since 2000. Only one of the 27 construction components of the project has been completed. Also, funds not spent in the year in which they are appropriated can be reprogrammed, and more than \$200 million in federal and state funds are still needed to complete the project.

According to the Corps, DOTD, ARBC, and EBR, a lack of federal funding is the main reason for project delays throughout the scope of the project. Projects initiated and managed by the Corps are assigned a benefit/cost ratio to determine how much benefit will be achieved once the project is complete versus how much it will cost to complete the project. All Corps projects across the nation are ranked in order of their benefit/cost ratios, which is a strong factor in determining which projects receive funding. This funding method is unpredictable and inconsistent since a project can receive funding in one year but not in subsequent years due to projects with higher benefit/cost ratios being initiated.

Original Project Estimates:

Completion in calendar year 2012 at a cost of \$153 million.

Current Project Estimates:

Completion in calendar year 2019 at a cost of \$313 million if all funding is received immediately and work performed on project simultaneously.

Federal funding has ranged from \$0 in Federal Fiscal Year (FFY) 2011 to \$12,385,000 in FFY 2007. While federal funding has been available in most FFYs, the money has not come in sufficient amounts to complete large components of the project. For example, the next component to be completed is the vehicle and railroad relocation component of the project at U.S. Highway 61. This component will cost approximately \$30 million since it involves constructing three bridges. However, the largest amount of funding received by the Corps in one year from FFY 1999 through 2016 was \$12,385,000 in FFY 2007. According to the Corps, it needs full funding for this component of the project before it can hire a contractor to begin the work. As a result, it cannot bid out the work for the U.S. Highway 61 bridges because it has never received an appropriation close to the \$30 million needed.

State funding has also been inconsistent and unpredictable throughout the life of the project. The highest appropriation received through the state's capital outlay process by DOTD was \$5,000,000 in State Fiscal Year (SFY) 2008 and by ARBC was \$287,400 in SFY 2011. DOTD has not received capital outlay funding from the state for the Comite Project since fiscal year 2010, and ARBC has not received an appropriation from the state since fiscal year 2012. The tax paid by the locals in the benefit area to ARBC has been the most consistent source of funding for the project, as it has been provided every year since 2002 and has increased from \$1,113,957 in fiscal year 2002 to \$2,614,037 in fiscal year 2016. A breakdown of funding sources for each fiscal year is shown in Appendix E.

The most value in terms of diverting water will not be achieved until the end of the project, when the Comite River is connected to the canal. However, only one of 27 components of the project has been completed. The Comite Project has five functional elements, or phases, and each one is designed to add a benefit that can be immediately realized once it becomes operational by diverting water from bayous or rivers. Appendix G shows each of these functional elements. Within each element are multiple components that must be completed for the element to become functional. The Corps, DOTD, and ARBC all stated that the most logical way to execute the project is to complete each functional element, starting from the West and working East, as this will allow each element to become “functional” once completed. However, approximately 70% of the project value occurs in the last functional element. This means that 70% of the water diverted through this project will occur only with the completion of the last phase. Exhibit 3 shows a list of structures needed to be built or improvements needed to complete the project by functional element and how many have been completed.

Exhibit 3 Components by Functional Element			
Functional Element	Components Description	Total Components Needed	Total Components Completed
1	Lilly Bayou control structure; drop structure; pumping station; canal digging; Brooks Lake Closure*; vehicle bridge at U.S. Highway 61**; light vehicle bridge at Carney Road; Kansas City Southern Railroad bridge at U.S. Highway 61; Bayou Baton Rouge improvements; Utility Relocations at U.S. Highway 61	10	1
2	Drop structure; pumping station; canal digging; La. Highway 964 vehicle bridge; Cypress Bayou improvements	5	0
3	Drop structure; canal digging; La. Highway 19 vehicle bridge; Canadian National Illinois Central railroad bridge	4	0
4	Drop structure; pumping station; canal digging; light vehicle bridge at McHugh Road; White Bayou improvements	5	0
5	Comite River diversion structure; canal digging; U.S. Highway 67 vehicle bridge	3	0
Total		27	1
<p>* The Brooks Lake Closure could be removed from the project because all parties are not sure of what value it will add to the project, if any. If Brooks Lake is deemed necessary, it can be moved to Functional Element 5 for construction.</p> <p>** The Corps constructed a bypass road where the three U.S. Highway 61 bridges will be relocated, but this is not a part of the final project and is therefore not reflected in this table.</p> <p>Source: Prepared by legislative auditor’s staff using information from ARBC, the Corps, and DOTD.</p>			

As Exhibit 3 shows, the Lilly Bayou control structure is the only component that has been completed. It was completed because the Corps used a mechanism known as the “continuing contracts clause” that allowed the Corps to award a construction contract that was not fully funded, with a commitment from the Corps to fund the remaining portion of the contract in the following years. The Corps is prohibited from using this mechanism now, since it essentially obligates future appropriations. As a result, it cannot be used for the U.S. Highway 61 bridges. Even though this clause was used to fund the Lilly Bayou control structure, the Corps still did not have enough federal funding to complete the component. ARBC borrowed more than \$4.1 million against future taxes to ensure that the contractor did not leave the job before it was completed.

Even though the Lilly Bayou control structure was constructed in 2011, it has not been deemed “functional” by the Corps and has thus not been turned over to EBR. The Corps has some concerns that the structure may be beginning to deteriorate due to a lack of use. The Corps is responsible for ensuring that the structure is in acceptable condition before EBR assumes operations and maintenance of it. Exhibit 4 shows the Lilly Bayou control structure.

Exhibit 4
Lilly Bayou Control Structure



Source: Prepared by legislative auditor’s staff using information from ARBC.

Another issue with federal funding is that the money appropriated for the Comite Project can be used for other federal projects if it is not spent within the federal fiscal year in which it was appropriated. The Corps is not allowed to encumber⁸ money from previous years’ allocations until it has enough total funding to contract out for larger components of the project. Instead, if appropriated funding is not spent by the end of the federal fiscal year, it is re-programmed to other Corps projects. According to the Corps, this practice has happened twice over the course of the project and resulted in a loss of approximately \$4.5 million in funds for the project.

To prevent this from occurring, the Corps has been using its funding allocations to complete smaller aspects of the project, such as creating designs for all functional elements. However, design work has now been completed for most of the project. The Corps stated that it could break the U.S. Highway 61 bridge component into multiple, smaller components, such as one for the northbound vehicle bridge, one for the southbound vehicle bridge, and one for the railroad bridge, in order to use the funding allocations for construction instead of design. However, this would increase the overall cost of the U.S. Highway 61 bridge component of the project because each project would have to be bid and managed separately. According to DOTD, separating this component would cost approximately \$37 million instead of the estimated \$30 million it would take to complete this component at the same time.

Total project funding in excess of \$200 million is still needed to complete the project. According to DOTD it needs an estimated \$87 million for work necessary to complete its

⁸ Encumbered funds are monies that are intentionally set aside to pay for future obligated or planned expenses.

requirements,⁹ and the Corps stated that it needs an estimated \$125 million to complete its requirements.¹⁰ In August 2016, Governor John Bel Edwards requested a federal aid package to help with flood recovery after the flooding of August 2016. On September 28, 2016, Congress passed a bill that included \$438 million in federal aid for flood damage, and \$1.24 billion in additional flood relief aid was passed on December 6, 2016. Funds were not designated specifically for the Comite Project in either federal aid package.

Insufficient purchasing of mitigation land by the Corps when it was acting on DOTD’s behalf for LERRDs caused delays in the project, which is the reason DOTD took back LERRDs. In addition, state legislation in 2010 prohibited the expropriation of land for the Comite Project, which resulted in the Corps having to identify new mitigation land.

Federal law requires that mitigation land be purchased in flood control projects to restore, establish, and/or preserve wetlands, streams, or other aquatic resources specifically to offset project impacts. State law requires mitigation land be purchased from willing sellers or through mitigation banks for the Comite Project. Specifically, Act 734 of the 2010 Regular Legislative Session prohibited the state from cost-sharing for expropriation of mitigation land for the Comite Project.¹¹ Mitigation land is measured in average annual habitat units (AAHUs) instead of acreage. The number of AAHUs that a parcel of land qualifies for depends on how much restoration work is performed on the land. For example, restoring land to its natural state qualifies for more AAHUs than simply performing conservation work. According to the Corps, DOTD, and ARBC, approximately 705 AAHUs are needed for the Comite Project. As of September 19, 2016, 252 (36%) AAHUs had been obtained for the project.

<p>A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources.</p>
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The Corps did not acquire mitigation land to keep up with its construction while it was acquiring LERRDs on behalf of DOTD, because it could expropriate any needed mitigation land at the end of the project. With the passage of Act 734, the Corps had to identify new mitigation options and would not allow the project to move forward until a new environmental assessment was completed to achieve this. DOTD signed a Memorandum of Agreement (MOA) with the Corps in March of 2002 that allowed the Corps to take over LERRD acquisitions for the project. According to DOTD and the Corps, it is not uncommon to allow the Corps to perform these responsibilities on behalf of the state. This MOA lasted until

⁹ DOTD and ARBC have approximately \$16 million of this from other capital outlay and local taxes.

¹⁰ The project would need to be reauthorized by the Federal government if Federal expenditures were to exceed \$250 million. With Federal funding already spent and estimated Federal funding to complete the project, it will total approximately \$203.4 million.

¹¹ Expropriation is the act of a government in taking privately-owned property to be used for purposes designed to benefit the overall public.

February of 2011, when DOTD ended the agreement due to a lack of progress. Then, at the request of ARBC, DOTD allowed ARBC to take the lead on acquiring LERRDs from February of 2011 through November of 2014. In November 2014, DOTD took back the lead from ARBC because new DOTD management felt as though DOTD had the capability to perform this function.

As previously stated, DOTD signed an agreement that allowed the Corps to perform mitigation land acquisitions from 2002 through 2011. The Corps constructed the Lilly Bayou control structure during this timeframe, but it only acquired 36 AAHUs of mitigation land even though 135 AAHUs were needed for functional element 1 alone. The Water Resources Development Act of 1986 stated that mitigation lands should be obtained before construction of the project commences or concurrently with lands and interests in lands for project purposes. However, the Corps stated that it originally knew it could expropriate land for mitigation purposes if there were no willing sellers, meaning it could acquire all necessary mitigation lands before the entire project was completed.

Once DOTD took back LERRDs acquisitions in 2011, the Corps stated that it could not move forward with construction until the required mitigation land was purchased for the Lilly Bayou control structure and other components in functional element 1. Because Act 734 was passed in Louisiana's 2010 regular session and prohibited expropriation of land for the purposes of mitigation specifically for the Comite Project, the Corps stated that it needed to identify other mitigation options before it could proceed with construction. This Act significantly decreased the project's ability to obtain mitigation land,¹² since it could now only be obtained from willing sellers. As a result of this Act, the Corps was required to perform a second environmental assessment to identify other mitigation land opportunities. However, it took approximately two years for the Corps to conduct a new environmental assessment.

The new environmental assessment was released by the Corps in July 2012, and it identified three new mitigation options for obtaining the required mitigation land, including obtaining mitigation credits from mitigation banks, purchasing Profit Island, and purchasing lands in McHugh Swamp. As mentioned earlier, ARBC led the LERRDs effort beginning in 2011. ARBC focused its efforts on purchasing Profit Island for multiple years but was not successful due to disputes over surface mineral rights and the value of the land. DOTD ultimately took back LERRDs responsibilities in 2014 and has since worked with the Corps to successfully purchase mitigation bank credits and ARBC to acquire land in McHugh Swamp. There are now enough AAHUs to complete more components in functional element 1, such as the bridges at U.S. Highway 61. The number of acres of total land and mitigation AAHUs is shown in Exhibit 5 by agency.

¹² This bill applies only to the Comite River Diversion Project and does not affect other projects in Louisiana.

Exhibit 5			
Acres and AAHUs Acquired by Agency			
Fiscal Years 2002 through 2016			
Agency	Timeframe	Acres	AAHUs
Corps	2002 - 2011, 2015	827	252
ARBC	2011 - 2014	162	0
DOTD	2014 - 2016	383	0
Total	2002 - 2016	1,372	252
Source: Prepared by legislative auditor's staff using self-reported information from ARBC.			

Since EBR will be responsible for maintaining the mitigation lands and canal, the amount of land and associated costs they are responsible for is dependent on what mitigation option is used. When EBR¹³ originally agreed to maintain the canal once it was completed, it did so believing that the Recreation and Park Commission for the Parish of East Baton Rouge (BREC) would actually maintain all mitigation lands. According to DOTD and EBR, BREC was interested in maintaining the mitigation lands because it planned to turn them into a park along the Comite River. Since Act 734 stated that land could not be expropriated for the Comite Project for mitigation purposes and because not all residents along the Comite River were willing to sell, BREC was no longer interested in maintaining the mitigation lands. Without enough willing sellers along the Comite River, mitigation land will have to be purchased elsewhere or through mitigation banks.

Without BREC, EBR will be responsible for maintaining the rights of way land along the canal, as well as any mitigation lands purchased for the project. According to EBR, it prefers that mitigation credits be purchased from mitigation banks instead of purchasing mitigation land so that EBR will not be responsible for the maintenance. EBR stated that it has maintained canals and similar structures for many years and plans to absorb the maintenance costs for this canal into its current maintenance budget; however, they have no real expertise in maintaining mitigation wetlands.

Recommendation 1: DOTD should work with EBR to determine the best approach for obtaining mitigation lands.

Summary of Management's Response: DOTD agrees with this recommendation. DOTD has worked with EBR on past mitigation acquisitions and will continue to do so. See Appendix A-1 for DOTD's full response.

¹³ The Mayor-President signed the agreement on behalf of East Baton Rouge Parish and the city of Baton Rouge.

The current construction delay is the U.S. Highway 61 bridge construction and the associated utility relocations that must take place. DOTD must relocate utilities, such as pipelines and telecommunications lines, at this location prior to bridge construction; however, DOTD stated that it is concerned that no federal funding will be approved and money spent to relocate utilities will therefore be wasted.

Before any of the \$30 million in construction work is performed by the Corps to build vehicle and railroad bridges or dig the canal near U.S. Highway 61, the utilities underground, which include pipelines, must be relocated. While some utilities such as Demco and AT&T have been relocated to high wires, there is currently no agreed upon plan for how to move the pipelines in the proposed construction area.¹⁴ According to DOTD, there are 11 or 12 pipelines owned by seven or eight companies¹⁵ running through the area, and DOTD is responsible for moving these pipes 60-65 feet below ground for them to continue to serve their purpose. This utility relocation, which DOTD is financially responsible for, will cost approximately \$10 million for materials and supplies and a \$40 million maximum in compensating companies for loss of production due to the pipelines being temporarily out of service.

DOTD has concerns with relocating these utilities without assurance that there will be federal funding to complete the construction phase of the entire project, which is the responsibility of the Corps. DOTD stated that, unlike land, which could be sold if not used for project purposes, there is no value associated with relocating these utilities. If the utilities were relocated and the project is never completed, then the money spent to relocate them would be wasted, which would include money DOTD has received through capital outlay and tax money collected from the locals by ARBC.¹⁶ The Corps stated that if it were to receive the funding at the beginning of a federal fiscal year, it would need to spend the funding that year. However, it may take 12 to 18 months to relocate utilities, meaning these funds would likely be used for other Corps projects.

Stakeholders cited the need for a comprehensive plan to help alleviate flooding issues along the entire Comite and Lower Amite River Basins.

Preliminary qualitative analysis conducted by the Corps found that had the project been completed, it could have prevented flooding for approximately 5% of damaged structures in the August 2016 floods; however, the Corps stated that much more time is needed to actually study the flood event. The Corps, DOTD, and ARBC all agree that the August 2016 floods would have exceeded the capacity of this project, as the rainfall generated by the storms was greater

¹⁴ According to DOTD, these negotiations are ongoing.

¹⁵ The number of pipelines that need to be relocated and the number of companies that it affects depends on the final location of the canal.

¹⁶ ARBC currently has an agreement with DOTD in which it pays 50% of LERRDs' costs incurred by DOTD.

than the 100-year flood stage. However, DOTD also stated that the canal may have caused some back water flooding, which could have resulted in more damage north of the project. Additional research is needed to determine the true impact that this project could have had on the region.

All parties agree that a more comprehensive approach is needed for the entire Comite and Amite River Basin area; however, all cite federal funding as a hindrance to that being accomplished. The Corps stated that a comprehensive study should be performed on the impacted drainage basins to assist in mitigating future flood events. The study should consider all available tools at all levels of government and should be informed and augmented by existing project and study authorizations. Projects that have been studied or authorized in the past include the West Shore Lake Pontchartrain project, the East Baton Rouge Flood Control project, Darlington Reservoir, potential projects at Bayou Manchac, and improvements to the Amite River. ARBC, the Corps, DOTD, and EBR all agree that the Comite Project is a necessary part of a comprehensive approach, but it alone cannot prevent flood events such as the one that occurred in August 2016. However, receiving federal funding for these projects is a major obstacle, as evidenced by the issues with funding on the Comite Project.

Due to the significant delays and unpredictable funding, the legislature, the Comite River Diversion Canal Project Task Force, and stakeholders may wish to determine if the Comite Project is still a viable project for the state or if it should be revised to fit into a larger flood protection strategy for the region. While the funding appropriated by the Federal government for the Comite Project is not within the control of the Louisiana Legislature, the appropriation and proper expenditure of state and local funds is. Therefore, developing a definitive plan for how the project should proceed with proper funding will help to minimize costs. If the project is revised, consideration would need to be made regarding the Lilly Bayou control structure and the funds already spent, especially dedicated local tax dollars.

Matter for Legislative Consideration: The legislature may wish to direct the Comite River Diversion Canal Task Force to evaluate the viability of this project, including ways to obtain enough funding for completion, whether or not to revise the scope and design of the project, or whether or not it should be continued.

APPENDIX A: MANAGEMENT'S RESPONSE

Louisiana Department of Transportation and Development's
Response – A-1

Amite River Basin Commission's Response – A-2



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John Bel Edwards, Governor
Shawn D. Wilson, Ph.D., Secretary

January 13, 2017

Mr. Daryl G. Purpera, CPA, CFE
Legislative Auditor
P. O. Box 94397
Baton Rouge, LA 70804

RE: Comite River Diversion Canal Project

Dear Mr. Purpera:

The Department is in receipt of your Report titled "Comite River Diversion Can Project Status and Reasons for Delays". I appreciate the opportunity to provide a response and also to have my response letter included as an attachment in the final report.

DOTD concurs with the information provided in this report with two minor points of clarification. First, in the Checklist for Audit Recommendations, please note that it was not just insufficient purchasing of mitigation lands but rather the slow rate of purchasing all Lands, Easements, Rights of Way, Relocations and Disposals (LERRDs). We and the other Non-Federal Sponsors (NFS) were not satisfied with the LERRDs acquisition rate of the U.S. Army Corps of Engineers and felt we could perform those tasks faster and more efficiently. Even though, the New Orleans District of the Corps of Engineers has made annual funding requests for the Comite project, the project has not received regular funding since 2006. Second, on page 11 the statement, "*However, DOTD also stated that the canal may have caused some back water flooding, which could have resulted in more damage north of the project.*" needs clarification. A Corps Project Manager stated that the Corps' preliminary analysis of the August flood showed that water may have flowed north through Cypress Bayou causing additional flooding north of the canal, if the canal had been constructed. As stated, the inconsistent and inadequate federal funding is by far the principal main reason for the project's lack of progress. It should also be noted that lack of NFS funding has never been the reason for a project delay.

With respect to the Finding Recommendation, "*DOTD should work with EBR to determine the best approach for obtaining mitigation lands.*" DOTD completely agrees with this recommendation and we have worked with EBR on past mitigation acquisitions and will continue to do so. We know, that while more expensive initially, EBR would prefer we purchase credits from a mitigation bank because maintenance obligation for mitigation credits is the responsibility of the bank owner, but the purchase of mitigation credits is not considered to be a LERRDs and must be performed by the Corps.

As indicated on page 11 of the report, the Corps' analysis showed that in the August floods the Comite Diversion Canal would have benefited approximately 5% of the flooded structures, located immediately downstream of the canal's inlet structure at the Comite River.

On October 5, 2016, a Flood Forecasting & Hazard Analysis Workshop was held at the LTRC Auditorium. Multiple local, state and federal agencies attended and it was agreed that the very minor impact the Comite Diversion Project would have had in the August flood was because the Comite project was designed to address a single storm event, the 1983 flood, which was far less rain over a much smaller area than the August, 2016 event. It was also recognized that the Comite project is just one component of a multifaceted flood protection solution for the Amite and Comite River basins. Several protection elements such as dry and wet reservoirs, levees, channel improvements and even additional diversions were discussed, but currently there is no method to evaluate the effects of individual projects on the entire watershed. Therefore, in coordination with the FEMA, GOHSEP and the Office of Community Development, DOTD is moving forward with the development of a linked numerical model of the entire Amite and Comite Basins. The model will be funded by OCD and work performed under the direct supervision of DOTD. We will hold update meetings with all stakeholders at all task milestones to keep everyone informed as to the progress. The linked model will include hydrology, hydraulics and benefits/consequences elements which will enable agencies such as GOHSEP and OCD to prioritize funding to certain areas after running multiple scenarios of protection or mitigation efforts.

The federal funding of the Comite project will have to be evaluated. If the State determines that the project cannot be constructed in a reasonable timeframe using federal funds, we could pursue advancing the project with State GO bonds or other non-federal funding options. Those same funding scenarios could be used to construct other flood protection projects/features identified through numerical model analyses.

The USACE has requested \$125M which they believe would allow them to complete the designs and construct the remaining portion of the project. Congress has not yet addressed this request. DOTD has requested \$87M, which we believe when coupled with approximately \$20M from the Amite River Basin Commission will allow the NFS to complete the remaining LERRDs. The project is cost shared on a 75/25 fed/non-fed basis. However, the NFS are responsible for LERRDS and those costs must exceed 50% of the project cost before the cost share can be revisited.

Daryl G. Purpera
January 13, 2017
Page 3

Thank you for the opportunity to respond to the report and to have this letter included in the final audit report. Please feel free to contact Barry Keeling, Undersecretary, at (225) 379-1270 or myself should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shawn D. Wilson".

Shawn D. Wilson, Ph.D.
Secretary

SDW:ck:rmv

c: Dr. Eric Kalivoda, P.E., DOTD Deputy Secretary
Mr. Barry Keeling, DOTD Undersecretary
Mr. Don Johnson, DOTD Deputy Undersecretary
Ms. Lesha Woods, DOTD Financial Services Administrator
Ms. Janice P. Williams, DOTD Chief Engineer
Mr. Christopher Knotts, DOTD Deputy Assistant Secretary, OPW



DRAINAGE AND WATER
CONSERVATION DISTRICT

John Bel Edwards

Governor



Dietmar Rietschier
Executive Director

Board of Commissioners

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East Feliciana Parish

Larry N. Thomas
East Feliciana Parish

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St. Helena Parish

Lionel L. Bailey, Sr.
St. James Parish

Terry Louque
St. James Parish

Donald E. Thompson
Member-at-Large

Toni B. Guitrau
Executive Secretary

January 13, 2017

Daryl G. Purpera, CPA
Legislative Auditor
1600 North Third Street
Baton Rouge, Louisiana 70804-9397

RE: Comite River Diversion Canal Project
Status and Reasons for Delay
Audit Control No. 40160016

Dear Mr. Purpera:

On behalf of the Amite River Basin Commission ("ARBC"), please accept this letter as our management response to your report entitled *Comite River Diversion Canal Project Status and Reasons for Delay*. The subject matter of this report is extremely complex and we provide our additional comments that may further illuminate the current status and prior activities.

ARBC is in agreement with the Legislative Auditor's conclusions concerning the delay in completion of this Project. The Project is viable and much needed. It would be irresponsible to abandon this Project after spending \$39 million of non-federal funds and \$78 million by the federal sponsor. We have simply invested too much to abandon this Project. Governor John Bel Edwards has requested direct federal funding in his disaster request to complete this Project. This request is still pending in Washington. We would urge the Trump administration and Congress to secure the necessary funds to complete this important drainage Project.

We would supplement the information that is provided in the above referenced report as follows:

Comite Project Funding and Expenditures. It should be pointed out that the millage collected by ARBC is restricted and limited to the Comite Diversion Canal Project. The tax proposition describes the Comite Project and the funds cannot be used for any other purposes other than the aspects of the construction of this Project.

State funding has also been inconsistent and unpredictable throughout the life of the project. ARBC agrees with this conclusion. As pointed out in the report, ARBC has been the most consistent source of funding for the Project.

The most value in terms of diverting water will not be achieved until the end of the project. ARBC agrees with this conclusion because the Comite River is located on the eastern edge of the Project. It should be pointed out that the largest and most costly component in the Project is the Lilly Bayou Control Structure on the western end of the Project. The Report describes 27 separate "construction components." According to the documents of the Corps, there are 16 separate construction contracts for the Project. The largest and most costly of this component was Lilly Bayou Control Structure in Phase 1 with a cost of over \$34 million. Lilly Bayou has not been turned over to the non-federal sponsors due to the fact that it is not functional until Phase 1 of the project is completed. It should be pointed out that the vast majority of the cost of the Project is found in Functional Element 1. Functional Element 1 includes a 4-lane highway bridge, a RR bridge, Baton Rouge Bayou Drop Structure with a bridge and a section of Channel 1.5 miles long. Once this element is completed, it will make the project partially functional.

Relocation of Utilities. ARBC is in complete agreement with DOTD concerning the timing of the relocation of utilities. Because of the unpredictable federal funding patterns, the non-federal sponsors do not want to go to the expense of relocation of utilities without assurances from the USACE that the funds will be available for construction. The spending of millions of dollars to relocate utilities without assurances from the USACE would be irresponsible on the part of DOTD and ARBC. ARBC is unable to confirm the cost estimates by DOTD concerning utility relocations. ARBC is of the belief that the actual cost may be substantially less than that suggested by DOTD.

Insufficient purchasing of mitigation land by the Corps and the passage of state legislation prohibiting expropriation did delay the Project. ARBC agrees with this conclusion. DOTD and ARBC agreed to take back the function of acquiring LERRDs from the Corps in March 2011. It was ARBC and not DOTD that took over this function after the cancellation of the MOA with the Corps. ARBC was faced with finding “willing sellers” in the original designated mitigation area along the Comite River. Those efforts were unsuccessful, and in January 2012, the non-federal sponsors requested that the Corps authorize a new Environmental Assessment to expand the mitigation area. With the assistance of the congressional delegation, a revised Assessment was finally secured in June 2012. ARBC continued its efforts to secure additional acreage for the Project from willing sellers but was unable to acquire any mitigation land or credits. At the request of Senator David Vitter and DOTD, ARBC agreed in November 2014, to amend the Cooperative Endeavor Agreement (“CEA”) with the DOTD returning the acquisition of LERRD’s to the state.

Present Cooperative Endeavor Agreement (CEA). ARBC and DOTD are currently operating under a cooperative endeavor agreement concerning the sharing of costs. That CEA provides for equal sharing of costs between the two entities. The Original CEA was entered into with this cost share based upon funding on hand by each entity. The current CEA must be amended in the future to reflect a change in that cost share. Once the millage term has run, ARBC will be limited to provide additional funds and will not be able to maintain that equal cost share in the future.

Viability of Project. ARBC believes that the Comite Diversion Canal Project is a viable and needed project. It would be irresponsible to abandon this project after spending over \$117 million. We simply have too much invested to simply abandon the project. There certainly may be other drainage solutions that also need to be considered. It must be pointed out that the ARBC millage funds cannot be a source of funding for any other drainage projects in that the taxing proposition limited the authorized use of these tax payments to the Comite Diversion Canal Project.

We would like to thank the Louisiana Legislative Auditor's staff for the work in preparing this performance report. Overall, the report properly describes the history and issues surrounding this important Project. We are hopeful that the congressional delegation and greater Baton Rouge legislative delegation can secure the necessary funds to complete this important drainage project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dietmar Rietschier".

Dietmar Rietschier
Executive Director

C.c. Ben Babin, President ARBC

APPENDIX B: SCOPE AND METHODOLOGY

We produced this report under the provisions of Title 24 of the Louisiana Revised Statutes of 1950, as amended. This report generally covered the time period of state fiscal years 1999 through 2016 (July 1, 1999 through June 30, 2016). The audit objective was:

To evaluate the status of and reasons for delays with the Comite River Diversion Project.

The scope of our audit was significantly less than required by *Government Auditing Standards*. We believe the evidence obtained provides a reasonable basis for our findings and conclusions. To answer our objectives, we performed the following steps:

- Conducted interviews with ARBC, Corps, DOTD, and EBR employees, as well as elected Louisiana officials.
- Researched and reviewed relevant information for the Comite River Diversion Project, including, but not limited to, maps of the project, benefit areas, and functional elements.
- Obtained and analyzed budget, expenditure, and contract information from ARBC, the Corps, and DOTD.

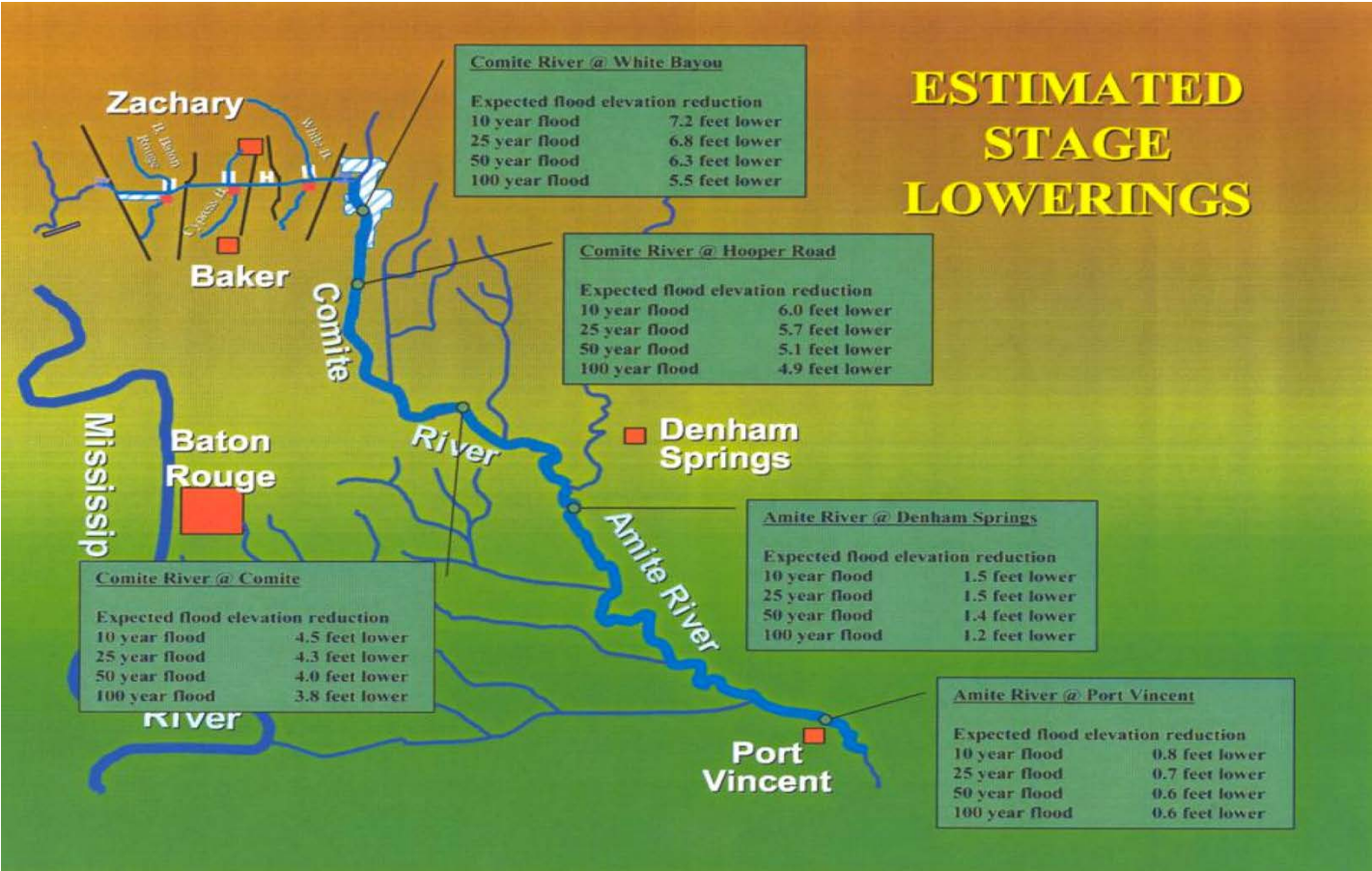
APPENDIX C: COMITE RIVER DIVERSION CANAL PROJECT*



* The mitigation area shown in this map reflects the original mitigation area and does not include newly-identified mitigation options, including Profit Island and McHugh Swamp.

Source: Prepared by legislative auditor's staff using information from the Corps and DOTD.

APPENDIX D: ESTIMATED STAGE LOWERINGS



Source: Prepared by legislative auditor’s staff using information from the Corps.

APPENDIX E: BREAKDOWN OF FUNDING, BY FISCAL YEAR

Year	Federal - Corps	State – ARBC	State – DOTD	Local – ARBC Taxes	Total**
1999	\$930,000	\$0	\$0	\$0	\$930,000
2000	930,000	0	0	0	930,000
2001	1,250,000	61,997	0	0	1,311,997
2002	3,181,000	200,000	3,500,000	1,113,957	7,994,957
2003	4,989,000	188,330	400,000	1,204,938	6,782,268
2004	4,153,000	200,000	0	1,290,871	5,643,871
2005	8,070,000	0	2,400,000	1,559,010	12,029,010
2006	6,191,000	0	3,600,000	1,679,713	11,470,713
2007	12,385,000	50,000	4,000,000	1,855,055	18,290,055
2008	8,352,000	50,000	5,000,000	2,016,009	15,418,009
2009	9,091,000	50,000	0	2,196,248	11,337,248
2010	4,844,000	0	4,500,000	2,346,674	11,690,674
2011	-4,500,000*	287,400	0	2,349,070	-1,863,530
2012	-15,971*	275,700	0	2,422,999	2,682,728
2013	2,355,029	0	0	88,485	2,443,514
2014	96,515	0	0	4,983,765	5,080,280
2015	12,100,000	0	0	2,553,265	14,653,265
2016	4,000,000	0	0	2,614,037	6,614,037
Total	\$78,401,573	\$1,363,427	\$23,400,000	\$30,274,096	\$133,439,096

* Funds were reprogrammed during these years, meaning they were unused on the Comite Project and were instead shifted to another Corps project in Louisiana.

** Funding is shown by each agency's fiscal year. Federal funding for the Corps is allocated in the federal fiscal year (October 1 through September 30), while state and local funding for ARBC and DOTD is allocated in the state fiscal year (July 1 through June 30).

Source: Prepared by legislative auditor's staff using self-reported information from ARBC, the CORPS, and DOTD.

APPENDIX F: BREAKDOWN OF EXPENDITURES, BY CATEGORY AND AGENCY

Category	ARBC	DOTD	Corps (Federal Funds Only)	Total	Description
Design and Engineering	\$2,435,311	\$231,929	\$35,500,000	\$38,167,240	Agency and contracted design, engineering, soil boring, and hydrology
Land	7,913,409	19,005,803***	5,141,342***	32,060,554	Rights of way and mitigation land and mitigation bank credits
Construction	4,146,466*	0	27,853,534	32,000,000	Contracted construction
Employee Time	1,975,149	593,303**	9,906,697	14,298,649	Non construction or design time charged by employees to the project
Other Project Costs	2,506,726	50,466	0	733,692	Insurance for owned lands, liability, workers' compensation, lawsuit defense costs, and indirect costs such as advertising and supplies and relocation of utilities
Total	\$18,977,061	\$19,881,501	\$78,401,573	\$117,260,135	

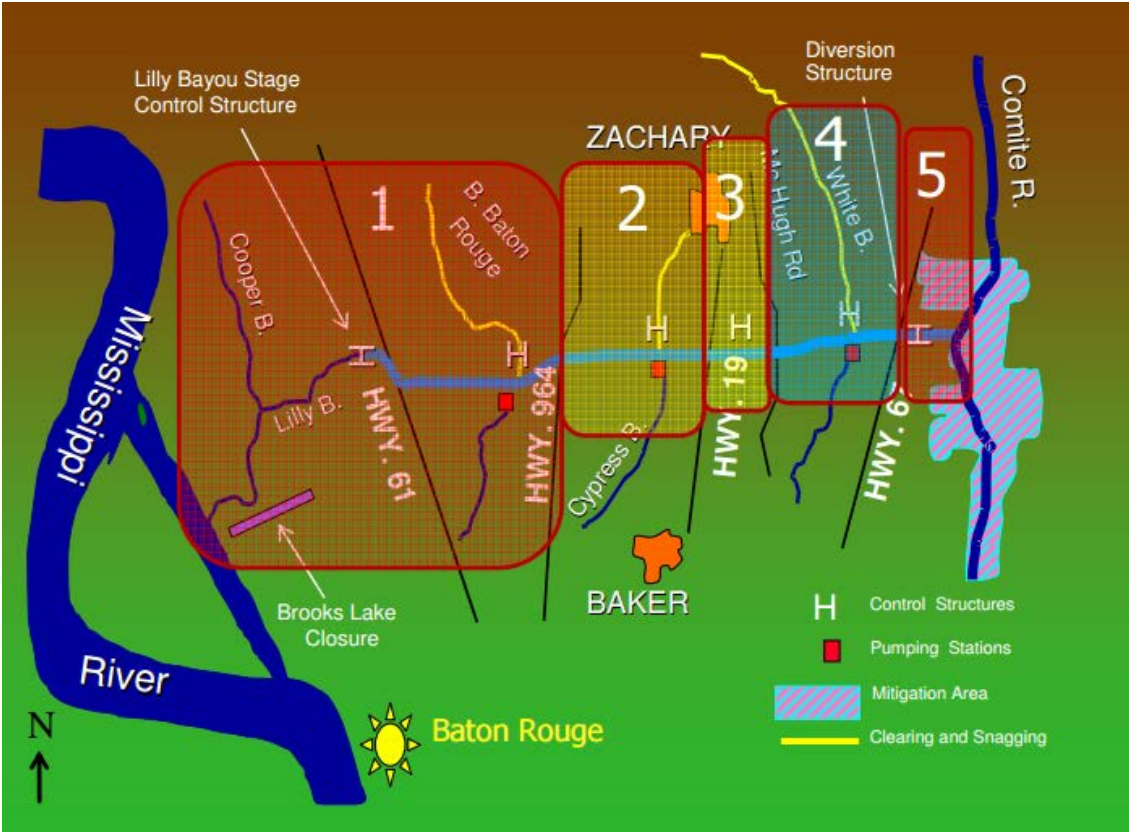
* Funds to complete Lilly Bayou that were given to the Corps from ARBC.

** DOTD paid the Corps for time charged by its employees while the Corps led LERRDs acquisitions.

*** The Corps spent \$8.2 million on mitigation bank credits; however, for the purpose of this exhibit, we included \$3.1 million of that cost in DOTD land to reflect the state's cost-share requirement.

Source: Prepared by legislative auditor's staff using self-reported information from ARBC, the Corps, and DOTD.

APPENDIX G: FIVE FUNCTIONAL ELEMENTS



* The mitigation area shown in this map reflects the original mitigation area and does not include newly identified mitigation options, including Profit Island and McHugh Swamp.

Source: Prepared by legislative auditor’s staff using information from the Corps.