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February 9, 2026

Mr. Michael J. Waguespack  
Legislative Auditor  
1600 North Third Street  
Post Office Box 94397  
Baton Rouge, LA 70804

RE: Louisiana Legislative Auditor – Investigative  
Report of August 13, 2025  
15<sup>th</sup> Judicial District Court- Lafayette

Dear Mr. Waguespack:

I received an investigative audit from the Louisiana Legislative Auditor and have reviewed that audit to determine whether it provided any basis for criminal prosecution. The Office of the District Attorney has not received a complaint or investigation from any law enforcement agency regarding this matter, which is normally a pre-condition to our review for prosecution. However, the applicable statutes of limitation for any potential criminal violations will prevent the institution of felony charges at some point within the next few weeks, so I have reviewed the audit report and made a charging decision from that Legislative Auditor Report, which is the sole evidence presented to my office in this respect.

The Legislative Auditor's Report included the following pertinent information. The Report was also sent to the United States Attorney for the Western District of Louisiana, Governor Jeff Landry, Attorney General Elizabeth "Liz" Murrill, Mayor-President Monique Boulet, and the members of the Lafayette City and Parish Councils as of August 13, 2025.

**FACTS**

On August 4, 2020, LCG Director of Public Works Chad Nepvaux sent an Internal Memorandum to LCG CAO Cydra Wingerter, stating that certain tracts of land would be required for the construction of the Stormwater Management project. Nepvaux asked that the item be placed on the Council's next agenda for introduction. The Legislative Auditor's Report includes an Ordinance, JO-0080-2020 related to that item.

On April 12, 2021, Lafayette Public Works Department Civil Engineering Supervisor Jessica Cornay sent an Internal Memorandum to Cydra Wingerter, Chief Administrative Officer

of LCG, with an Agenda Item Submittal Form and Ordinance No. CO-062-2021, which declared the stormwater project a public necessity and authorized the acquisition of necessary rights-of-way, immovable property, and other property rights requisite to the construction of the project. The Agenda Item Submittal Form requesting adoption of the ordinance was recommended by Chad Nepvaux, Director of Public Works for LCG. CAO Wingerter approved the submittal for the agenda, and it was unanimously approved by the City Council when introduced on May 4, 2021. It was advertised on May 7, 2021, and the ordinance was finally approved by a unanimous City Council on May 18, 2021. Mayor-President Josh Guillory approved the ordinance on May 24, 2021.

Beginning on November 3, 2021, LCG advertised a Contract for excavation and disposal throughout the Lafayette City-Parish. The lowest bidder was awarded the Contract on December 29, 2021.

On February 18, 2021, LCG issued the first amendment to the Contract, for “Excavation and Disposal services for Bayou Vermilion Flood Control Project (Spoil Bank Removal).” The scope of work contemplated excavation and removal of soil on the banks of the St. Martin Parish side of the bayou. The dirt was then moved to the Lafayette Parish side, as the property across the river in St. Martin Parish had been purchased by LCG prior to the excavation work. The work was also noted “time sensitive,” as it had to be performed while the river was at its lowest point, and before a rain event raised the river depth and made the work impossible.

The opinion letter of Ms. Denise Puente, an attorney with Simon, Peragine, Smith & Redfearn, LLP in New Orleans, with extensive experience in Public Bid Law cases, indicates that the 2021 Contract at issue in this Audit Report defined the work to be performed under the Contract as “furnishing labor, equipment, and superintendent to excavation and disposal throughout the Lafayette City-Parish.” Based on other parts of the Amendment and the Contract, a strong argument could be made that the type of work to be performed under the Amendment was contemplated in the Contract. The fact that the price changed and that different equipment was used does not affect this argument. However, the Contract anticipated the work would be performed in Lafayette Parish, and did not anticipate or contemplate work outside that Parish. Some of the work performed was in St. Martin Parish. Therefore, the Legislative Auditor maintains that the 2021 Amendment was outside the scope of the Contract and should have been let for public bid prior to award.

## **LEGAL ANALYSIS**

The Louisiana Legislative Auditor found that LCG executed the Spoil Bank Removal Project on the St. Martin Parish side of the Vermilion River without legal authority, land rights, or proper permits from the U.S. Army Corps of Engineers. It found LCG failed to obtain a joint service agreement or cooperative endeavor agreement with St. Martin Parish, performed work on land that LCG did not fully own, failed to obtain a local permit from St. Martin Parish, and withdrew its federal permit application with the U.S. Army Corps of Engineers but still proceeded with the project. The LLA claims that these actions potentially violated LCG’s charter, a St. Martin Parish ordinance, and multiple provisions of state and federal law:

1. Code of Ordinances for St. Martin Parish, Louisiana, Section 14-2 Definitions, and Ordinance No. 21-07-1327.
2. 33 U.S.C. § 1344 (Clean Water Act – Section 404).
3. 33 U.S.C. § 409 (Rivers and Harbors Act – Section 10).
4. La. R.S. 38:2212

**A. Code of Ordinances for St. Martin Parish, Louisiana, Section 14-2 Definitions, and Ordinance No. 21-07-1327.**

Initially, I note that this office lacks jurisdiction to enforce the ordinances of St. Martin Parish, based on allegations of conduct occurring in St. Martin Parish, and therefore prosecuting any public officer or public employee of LCG for those violations in Lafayette Parish by this office would not be proper. Due to the questions of validity of that ordinance included in the Louisiana Legislative Auditor's Investigative Report, those allegations are relevant only to whether any potential violation of that ordinance could support a prosecution in the 15<sup>th</sup> Judicial District of any public officer or public employee of LCG. In considering all of the documentation included in the Louisiana Legislative Auditor's Investigative Report, there is ample evidence that calls the validity of that ordinance into question. The allegation of a violation of this ordinance is therefore not a valid basis for any prosecution of any public officer or public employee in Lafayette Parish. Therefore, a violation of this St. Martin Parish ordinance to support a charge for Malfeasance in Office under La.R.S. 14:134 against any public officer or public employee of LCG is refused for lack of sufficient evidence.

**B. 33 U.S.C. § 1344 (Clean Water Act – Section 404).**

Congress has extensive authority over this Nation's waters under the Commerce Clause. It has the power to regulate waters to limit pollution, and arguably that authority is not limited to navigable-in-fact waters, but also to "tributaries of navigable waters." Since courts have acknowledged that Congress has the authority to regulate the discharge of pollutants into those non-navigable tributaries. The 4<sup>th</sup>, 6<sup>th</sup> and 10<sup>th</sup> Federal Circuits have held that the U.S. Army Corps of Engineers' "tributary rule" was owed deference under a *Chevron* analysis, as explained below.

For purposes of this matter, I considered that the Vermilion River may be a tributary of navigable waters. Initially, Corps regulations interpreted the Clean Water Act so as to apply only to navigable-in-fact waters. In 1975, however, the Corps issued new regulations which redefined "waters of the United States." Under the revised regulations, the Clean Water Act applied not just to navigable-in-fact waters, but also to tributaries of navigable waters and interstate waters. Substantially identical regulations remain in place today. See 33 C.F.R. § 328.3(a)(5) ("tributary rule"). The Corps' "tributary rule" therefore expanded the agency's jurisdiction under the Clean Water Act, and the issue is whether that expansion exceeded the agency's statutory authority to regulate discharges of dredged and fill material.

Thus, under the U.S. Army Corps of Engineers' tributary rule, the Vermilion River is a "water of the United States" for purposes of the Clean Water Act. See 33 C.F.R. § 328.3(a)(5). If that is true, the Corps may regulate dredge and fill activities below the ordinary high water mark of the Vermilion River. See 33 U.S.C. § 1344(a); 33 C.F.R. § 328.4(c)(1). For criminal allegations of malfeasance in office, I have considered whether there is sufficient evidence that any public officer or public employee of LCG violated the Clean Water Act, 33 U.S.C. §§ 1311(a), and 1319(c)(1). To prosecute any of these persons under this statute, the federal government would have to prove that they violated the Clean Water Act knowingly, "not as the result of ignorance, mistake, or accident." *U.S. v. Hubenka*, 438 F.3d 1026, 61 ERC 2062, 36 Envtl. L. Rep. 20,043, 69 Fed. R. Evid. Serv. 593 (10th Cir. 2006).

When a case involves an agency's interpretation of a statute it administers, courts have applied a two-step approach announced in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). Under the first step of the *Chevron* analysis, court's would determine whether the Clean Water Act precisely addresses the question of whether Congress intended to include within the Act's coverage tributaries of navigable or interstate waters. The statute does not reveal the extent to which non-navigable tributaries may be regulated. Accordingly, "[t]he statutory term 'waters of the United States' is sufficiently ambiguous to constitute an implied delegation of authority to the Corps." *U.S. v. Deaton*, 332 F.3d 698 (4<sup>th</sup> Cir. 2003). Under the second step in a *Chevron* analysis, courts would defer to an agency's interpretation of a statute that it administers, so long as the agency's interpretation was permissible. However, since 2024, when *Chevron* was overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024), courts now must exercise their independent judgment in determining the best interpretation of a statute, as opposed to deferring to the agency's reasonable interpretation. Therefore, the issue of whether the Clean Water Act would apply to the Vermilion River is subject to review by any court considering that issue. That is just one question that would need to be resolved before determining whether a violation of the Clean Water Act could suffice as the basis of a Louisiana prosecution for Malfeasance in Office under La.R.S. 14:134.

Another issue that is ambiguous from the evidence presented in this matter is whether any public officer or public employee of LCG was responsible for a violation of the Clean Water Act, which requires the government to prove the "discharge of any pollutant into a water of the United States." 33 U.S.C. § 1311(a). Per *Avoyelles Sportsmen's League Inc. v. Marsh*, 715 F.2d 897, 924 n. 43 (5th Cir.1983), "dredged material" is by definition material that comes from the water itself.

The Legislative Auditor's Investigative Report stated that, according to the USACE, "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." USACE had concerns because the spoil bank removal "... disturbed the wetland ecosystems along the riverbanks." The Legislative Auditor's Investigative report stated, "LCG's actions likely constituted unauthorized activity under... 33 U.S.C. § 1344 (Clean Water Act – Section 404);...". (emphasis added)

There is no evidence presented to our office that the removal by an LCG contractor of a spoil bank created by the U.S. Army Corps of Engineers in the 1950's from either the St. Martin Parish or the Lafayette Parish side of the Vermilion River resulted in the discharge of any pollutant into a water of the United States. The only evidence presented was a statement from USACE that LCG's actions likely constituted unauthorized activity under the Clean Water Act. For a criminal violation in Louisiana state court based on a violation of La.R.S. 14:134, a prosecutor would have to prove the violation beyond a reasonable doubt, not merely that the underlying law was "likely" violated. Therefore, a violation of this statute to support a charge for Malfeasance in Office under La.R.S. 14:134 against any public officer or public employee of LCG is refused for lack of sufficient evidence.

#### **C. 33 U.S.C. Section 409, Rivers and Harbors Act of 1899, Section 10**

The Legislative Auditor's Investigative Report states that "LCG's actions likely constituted unauthorized activity under ... 33 U.S.C. § 409 (Rivers and Harbors Act – Section 10)." [LLA Report, at page 21].

The Rivers and Harbors Act of 1899 Section 10 provides, in pertinent part:

"The creation of any obstruction not affirmatively authorized by Congress, to the navigable capacity of any of the waters of the United States is prohibited; and it shall not be lawful to build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or other structures in any port, roadstead, haven, harbor, canal, navigable river, or other water of the United States, outside established harbor lines, or where no harbor lines have been established, except on plans recommended by the Chief of Engineers and authorized by the Secretary of the Army."

The statute was intended to benefit the public at large through a general regulatory scheme to be administered by the then Secretary of War. *California v. Sierra Club*, 451 U.S. 287, 101 S.Ct. 1775, 68 L.Ed.2d 101 (1981).

For a violation of Rivers and Harbors Act of 1899 to support a prosecution of any public officer or public employee of LCG for Malfeasance in Office under La.R.S. 14:134, those LCG public officers or public employees would have had to build "any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, or Other structure" in the Vermilion River. *Bordelon v. T. L. James & Co.*, 380 So.2d 226 (La.App. 3rd Cir. 1980).

In *Spanish Lake Wildlife Refuge and Botanical Gardens, Inc. v. Parish of Ascension ex rel. Martinez*, 2013-1155 (La.App. 1<sup>st</sup> Cir. 2014), the statute and its legislative history led the appellate court to hold that parishes have no duty to maintain an artificially high water level in a bayou for the benefit of swamp tour operators in the area.

A review of the jurisprudence shows that the statute has been used many times by the U.S. Government to recoup its expenses in removing a sunken vessel from a navigable waterway. Justice Black, in his dissent in *Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 437, 74 S.Ct.

608, 623, 98 L.Ed. 806, (1954), noted, a case that increased liability of a vessel owner, “Judicial expansion of the Limited Liability Act at this date seems especially inappropriate. Many of the conditions in the shipping industry which induced the 1851 Congress to pass the Act no longer prevail.”

In a typical Rivers and Harbors Act case that involved the owners of an oceanographic research ship, which collided with a Norwegian tanker, which in turn collided with and caused to sink a dredge belonging to Army Corps of Engineers, where the research ship owners tried to limit their liability under the Limitation Act to an in rem recovery, Fifth Circuit Court of Appeals Judge Goldberg wrote:

“Statutes can be read complementarily or contradictorily, but always with a gloss of contemporary time and clime. These statutory relics have always been on display but we must now look at them from a point of view not heretofore clearly examined. Although we juridically transport ourselves to the nineteenth century no mean navigational feat we must not lose our contemporary compass. The shifting sands of time demand innovative interpretative analysis lest we come to rest on a shoal that did not threaten our grandfathers, but is only newly formed. . . .

By enacting the Rivers and Harbors Act, Congress sought to keep our navigable streams navigable by authorizing the removal of obstructions placed thereon; in construing that statute in *Wyandotte*, the Court sought to ensure that the Act would cast the cost for removal on those who did the obstructing.” *University of Texas Medical Branch at Galveston v. U.S.*, 557 F.2d 438 (5<sup>th</sup> Cir. 1977).

This is typical of the cases involving the Rivers and Harbors Act – there has normally been some obstruction of a navigable waterway, and an aggrieved party is either attempting to limit their liability under centuries old limitation of liability laws, or obtain damages for the effect of an obstruction.

In the present case, there has been no evidence submitted that any act of a public officer or public employee of LCG violated 33 U.S.C. Section 409, Rivers and Harbors Act of 1899, Section 10, and the only evidence cited in the Louisiana Legislative Auditors’ Investigative Report was a statement from a representative of the U.S. Army Corps of Engineers, who told the Legislative Auditor 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.” Through the use of the barges, “It obstructed a navigable waterway – namely, the Vermilion River --which is classified as a navigable waterway under both state and federal law.” [LLA Report, at pp. 20-21] The report went on to state that “LCG’s actions likely constituted unauthorized activity under .... 33 U.S.C. § 409 (Rivers and Harbors Act – Section 10).”

There are no complaints from any vessel captains or any other persons that LCG’s spoil bank removal operations obstructed the Vermilion River, and there are no law enforcement reports

or witness statements to substantiate the above. Therefore, a violation of this statute to support a charge for Malfeasance in Office under La.R.S. 14:134 against any public officer or public employee of LCG is refused for lack of sufficient evidence.

Violations of the Clean Water Act and the Rivers and Harbors Act, are both federal laws. Prosecution under these two federal statutes are therefore not proper for our office to prosecute, and it is noted the U.S. Attorney for the Western District of Louisiana has been provided a copy of the LLA Audit Report. Therefore, my office will not prosecute for any violations of the cited federal statutes.

#### **D. La. R.S. 38:2212**

This leaves La. R.S. 38:2212, regulating the letting of Public Contracts, also known as the Public Bid Law. Before amendment in 1979, Louisiana's public bid law violations were punishable by criminal penalties. However, since the 1980 effective date of that amendment, only civil penalties are the punishment for violations of that act. Therefore, there can be no criminal prosecution under La. R.S. 38:2212.

However, Louisiana law could potentially allow a prosecution for Malfeasance in Office by the refusal or failure of a public officer or public employee to perform their lawfully required duty, performing that duty unlawfully, or knowingly permitting any other public officer or public employee to refuse or fail to perform any lawfully required duty. Thus, the mission of the Office of the District Attorney in this case is to determine whether there was a violation of La.R.S. 14:134 through a violation of the Public Bid Law, and if so, who could be prosecuted. Finally, this Office would have to make a charging decision as to whether sufficient evidence existed to prosecute such a charge, sufficient to obtain a conviction. The evidence that has been presented to my office is found in the Legislative Auditor's Investigative Audit dated August 13, 2025. Therefore, I will go through an analysis of the Malfeasance in Office statute and the applicable jurisprudence, and apply those to the facts and evidence submitted to my office.

La.R.S. 14:134 provides:

"Malfeasance in office is committed when any public officer or public employee shall:

- (1) Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
- (2) Intentionally perform any such duty in an unlawful manner; or
- (3) Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

Any duty lawfully required of a public officer or public employee when delegated by him to a public officer or public employee shall be deemed to be a lawful duty of such public officer or employee. The delegation of such lawful duty shall not relieve the public officer or employee of his lawful duty.

Whoever commits the crime of malfeasance in office shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars or both."

Lafayette Consolidated Government is governed by a Home Rule Charter. As per the LLA Audit report:

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.

The Louisiana Legislative Auditor found that LCG executed the Spoil Bank Removal Project on the St. Martin Parish side of the Vermilion River without legal authority, land rights, or proper permits from the U.S. Army Corps of Engineers, and without a Cooperative Agreement with St. Martin Parish. It found LCG failed to obtain a joint service agreement or cooperative endeavor agreement with St. Martin Parish, performed work on land that LCG did not fully own, failed to obtain a local permit from St. Martin Parish, and withdrew its federal permit application with the U.S. Army Corps of Engineers, then purchased the property on the St. Martin side of the river and proceeded with the project. [LLA Audit Report at 7-24]

The responses included in the LLA Investigative Report take issue with most of the LLA's findings, as then LCG City-Parish Attorney notes that since LCG owned the land on the St. Martin Parish side and was not asking St. Martin Parish for any contribution of funding or equipment, it did not need any cooperative agreement with St. Martin Parish. He also provided support that a Louisiana co-owner could make improvements to land, and any legal risk was an acceptable risk versus the potential cost.

The most serious issue in the LLA Audit Report was that the work in St. Martin Parish conducted under an emergency situation change order amendment was outside the scope of the original contract, and therefore should have been competitively bid as a standalone project. The original contract envisioned work "throughout the Lafayette City-Parish." The excavation work pursuant to the amendment was performed in both Lafayette and St. Martin Parishes, and therefore arguably was outside the scope of the original contract, and the emergency situation raised by the responses should not have allowed the St. Martin Parish work to have been performed without public bidding.

In reviewing this allegation, it is important to note that even if there was a violation of the Public Bid Law, that law (since its 1979 amendment), does not provide for criminal penalties. The question for this charging decision then is, 1) was there a criminal violation which can be proven

beyond a reasonable doubt, 2) what statute was violated, 3) who are the proper defendants to be prosecuted, 4) is there sufficient evidence to prove all the elements of the crime sufficient to obtain a conviction.

The only potential Louisiana state criminal statute that may apply in this case is La.R.S. 14:134, Malfeasance in Office, which has been described above. In order for the State to prevail, it would have to prove to a jury beyond a reasonable doubt the following elements:

1. a public officer or public employee,
2. intentionally refused or failed to perform,
3. any duty lawfully required of him, or
4. intentionally performs any such duty in an unlawful manner, or
5. knowingly permitted any other public officer or public employee, under his authority,
6. to intentionally refuse or fail to perform any duty lawfully required of him,
7. or to perform any such duty in an unlawful manner.

The jurisprudence indicates that prosecution for malfeasance is reserved for those cases in which a public official has **blatantly abused the authority of his office and violated the public trust by his direct, personal acts or failure to act.** *State v. Coker*, 625 So.2d 190 (La.App. 3<sup>rd</sup> Cir. 1993), *writ denied*, 624 So.2d 1204 (La. 1993). The Louisiana Supreme Court has provided guidance on this issue, stating that the “focus of the courts has been on whether there is a statute or provision of law which imposes an affirmative, personal duty on the public officer or employee in his role as such which he has intentionally failed to perform or intentionally violated.” *State v. Schwehm*, 729 So.2d 548 (La. 1999). In that case, the court upheld the malfeasance in office conviction of a former justice of the peace who failed to remit littering fines he had collected to the parish governing authority.

Justice Lemmon later explained in the *Perez* case from Plaquemines Parish, the court in the *Passman* case in 1980 examined the statutory language and, consistent with that language, narrowly defined malfeasance in office as the intentional failure to perform a specific duty expressly defined by the legislature:

In *State v. Passman*, 291 So.2d 1140 (La. 1980), this court was unwilling to say that any willful dereliction of duty constituted an intentional refusal or failure to perform a duty lawfully required of the public officer by the malfeasance statute. The court held that the defendant's misconduct did not constitute the crime of malfeasance if no statute delineated the affirmative duty that defendant was charged with failing to perform. By adopting this narrow “express legislative requirement” approach, the court obviously rejected the idea that the Legislature intended to adopt an open-ended offense covering general derelictions of duty. The court also sought to avoid any constitutional problems of vagueness. *State v. Perez*, 464 So.2d at 746 (Lemmon, Justice, dissenting).

The Louisiana Supreme Court examined another similar malfeasance case in *State v. Petitto*, 59 So.3d 1245 (La. 2011), where the Defendant was an elected member of the Tangipahoa Parish Council, and was alleged to have initiated and voted to approve a parish council resolution

supporting an application for tax benefits by the Pine Grove Subdivision, which was a project that his brother had planned to purchase and sell at a profit. The Supreme Court found that *Petitto* violated state ethics laws by his actions on the parish council, and allowed the malfeasance charges to proceed in district court. The *Petitto* case raises the issue of who could potentially be prosecuted for malfeasance in office in the present case, as the legislative auditor's report is not a law enforcement investigation and they have given their opinion as to the violations of law that they contend occurred. The Louisiana Legislative Auditor has made six recommendations to LCG as a result of their audit. *Petitto* and other Louisiana cases raise the possibility of potential defendants in this case ranging from the Director of Public Works to the Chief of Staff, Mayor President, and even council members.

The LLA made six (6) recommendations as a result of its audit:

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.

City-Parish Attorney Patrick Ottinger confirmed that LCG took seriously the recommendations of the Louisiana Legislative Auditor after its report of August 13, 2025, and took steps to implement procedures to ensure staff and leadership was educated and aware of the legal requirements for LCG projects, including the Public Bid Law, to prevent any similar situations in the future.

In the LLA Audit Report, current LCG City Parish Attorney Patrick Ottinger, then-Mayor-President Josh Guillory, and then-LCG City-Parish Attorney Greg Logan provided written responses, contesting the findings of the LLA and providing information from outside attorneys retained to provide legal advice regarding public bid law and state and federal regulations. The LLA Audit Report found that LCG improperly conducted work on property outside of Lafayette

Parish without a Cooperative Agreement or other intergovernmental agreement, which violated Louisiana law. Louisiana Revised Statute § 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.” [LLA Audit Report C10-C13]

The Local Services Law provisions are found in Revised Statutes § 33:1322-1337 (providing for intergovernmental agreements), and the language in those statutes establishes that the provisions are permissive, not mandatory. The language 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 equipment. . .” Logan’s response to the LLA Audit Report explain that no contribution of funds, personnel or resources to the spoil bank removal were made or envisioned from St. Martin Parish, and since LCG owned the land, LCG could perform the operations on its own property. [LLA Audit Report, at C13-C14]

The LLA Audit Report findings that LCG violated federal laws through the Spoil Bank Removal project is refuted by Logan’s response. [LLA Audit Report, at C17, C30-C31] My analysis of the facts as applied to 33 U.S.C. § 1344 (Clean Water Act – Section 404) and 33 U.S.C. § 409 (Rivers and Harbors Act – Section 10) above is sufficiently detailed for the present charging decision.

Logan disputes the validity of the St. Martin Parish Ordinance cited in the LLA Audit Report, and provides voluminous support through minutes and St. Martin parish records. The LLA Audit Report is silent as to the validity of the St. Martin Parish ordinance, merely claiming that LCG violated that ordinance. [LLA Audit Report, at C17-C24]

After a complete review of all evidence submitted in an important Louisiana decision, the Louisiana Supreme Court rejected the idea that the Legislature intended to adopt an open-ended offense covering general derelictions of duty in malfeasance cases. As stated in Justic Lemmon’s opinion in *State v. Passman*, 291 So.2d 1140 (La. 1980), the Supreme Court narrowly defined malfeasance in office as the intentional failure to perform a specific duty expressly defined by the legislature.

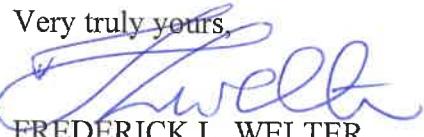
With the complexity of the amendments and the emergency situation at the time of these LCG actions as detailed by LCG’s legal experts, there was great ambiguity at the time these ordinances were being adopted and construction work being done. I agree with the Legislative Auditor that mistakes were made, and the Legislative Auditor provided recommendations to put into effect inside LCG to prevent those mistakes from happening in the future. LCG has indicated that those recommendations were taken seriously and steps were taken to avoid similar situations in the future.

However, in carrying out my duty to determine whether my office can prove beyond a reasonable doubt that any of the potential targets of this LLA Audit Report had the requisite criminal intent necessary for prosecution for Malfeasance in Office, I conclude in the negative. I cannot prove beyond a reasonable doubt that the Director of Public Works, chief of staff,

engineering supervisor, city or parish council members, the mayor-president, or any other public official or public employee of LCG acted with the requisite criminal intent to obtain a conviction in this case. I do not find sufficient evidence that any of the above listed public officials or public employees **“blatantly abused the authority of his office and violated the public trust by his direct, personal acts or failure to act”** in this case. I find no evidence from what has been presented to my office that anyone gained personally in any way from any of the LCG projects, and I find no evidence of any other state crimes that I can prosecute.

The prosecutorial discretion granted to District Attorneys is to be used to avoid the commencement of criminal prosecutions where all of the elements cannot be proven beyond a reasonable doubt, and in a situation such as found in this case, where a mistake may have made by public officials and employees in a complex, highly technical and emergency environment where many residents of the parish had suffered from flooded homes and the public officials and employees were doing their best to fix the flooding problems. In watching hours of City-Parish council meeting video, what stood out to me was the heartfelt concern the City-Parish Council and LCG’s personnel had for its residents, and the energy and time they devoted to attempt to make their residents safer. The diligence of LCG’s independent auditor was also evident, as Mr. Kolder ensured that the actions of LCG’s public officials and public employees were put to the test to ensure visibility of mistakes made and an opportunity to remedy and educate. For the reasons contained in this letter, the Office of the District Attorney for the Fifteenth Judicial District, based on the evidence submitted, declines to pursue any criminal prosecution of any public officials or public employees of Lafayette Consolidated Government related to the facts and circumstances detailed in the Louisiana Legislative Auditor’s Investigative Report of August 13, 2025.

With best wishes, I am

Very truly yours,  
  
FREDERICK L. WELTER  
First Assistant District Attorney  
15<sup>th</sup> Judicial District

FLW/jml

cc: Honorable Monique Blanco Boulet, Mayor-President  
Patrick Ottinger, Esq., Lafayette City-Parish Attorney  
Honorable Zachary A. Keller, U.S. Attorney, Western District of Louisiana