

Mitigation Credit for the
Larose to Golden Meadow Hurricane Protection Project
Part II

Prepared for
South Lafourche Levee District
P. O. Box 426
Galliano, LA 70354

Prepared by
Coastal Environments, Inc.
1260 Main Street
Baton Rouge, LA 70802

May 18, 2017

Mitigation Credit for the
Larose to Golden Meadow Hurricane Protection Project
Part II

Introduction

The SLLD (South Lafourche Levee District) submitted the original position paper (which in effect would have been Part I of above) to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM) in July of 2016. That paper was a review, evaluation and concurrence by Coastal Environments, Inc. (CEI) of the SLLD's claim that their previously assessed compensatory wetland mitigation requirement appeared to no longer be honored by the OCM as complete fulfillment of the SLLD's mitigation obligation for all wetland impacts associated with the Larose to Golden Meadow Hurricane Protection Levee System. The OCM responded indirectly to the SLLD position paper in its correspondence to the SLLD regarding Coastal Use Permit No. P20100242 (Morgan 2016a) and before that, in correspondence related to Coastal Use Permit No. P20150747 (Morgan 2016b). Italicized OCM excerpts from the two letters are followed by SLLD responses.

During review, the applicant has modified the original plans to reduce the direct impacts to vegetated wetlands from 24 ac to approximately 17 ac. Alternative methods to accomplish the benefit have been proposed, analyzed and rejected for valid reasons including the costs to install additional pump capacity. The project will function to reduce flood peak when the floodgates are closed on Bayou Lafourche by holding flood waters inside the retention pond until the pumps can reduce the water level within the forced drainage system. When considering relative sea level rise, the flood gates on Bayou Lafourche will be closing on a more frequent basis. Thereby, the need (to construct a series of levees and ridges around a retention area at LA HWY 308 in Golden Meadow) is justified and no other feasible alternative is available (Morgan 2016a).

The SLLD acknowledges and is appreciative of the OCM's recognition that the levee district's proposed measure is the best means of making its forced drainage system more effective.

...(M)itigation for the creation of the levee system was accomplished by construction of a levee and two weirs on Pointe-au-Chien Wildlife Management Area that were completed in 1992 (Morgan 2016a).

Based on its literal translation, lack of phasing requirements and absence of special conditions, the SLLD reaffirms its position that the OCM's 1985 consistency determination contemplated all wetland impacts attributed to the footprint of the hurricane protection levee and associated area to come under forced drainage. If the OCM thought the proposed improvements to Lafourche Parish's mostly pre-existing forced drainage system were not in the public interest because of the adverse impacts to wetlands, the agency should have strongly objected to the project, but they did not. Moreover, the consistency determination could have been conditional - stating that the SLLD's mitigation project had to meet certain requirements or milestones, but the determination did not include such provisions.

With exception to the National Marine Fisheries Service (NMFS), all of the regulatory and resource agencies agreed that the SLLD's proposed mitigation project at Pointe au Chien WMA was adequate. The potential issue of the need for mitigation in future 404 permit actions was clearly considered and addressed in the 1987 Mitigation Report: Because the proposed mitigation plan would compensate for both direct construction impacts and the induced impacts to wetlands within the hurricane protection system, the Corps would consider the mitigation provided by the plan in the overall evaluation in regards to mitigation needs related to future individual Section 404 permit actions.

The COE mitigated for the direct impacts to wetlands caused through implementation of the hurricane protection levee and the associated secondary development of wetlands within the system. Since the loss of wetland functions has been mitigated, (the COE) will not require that they be mitigated a second time (Ventola 2000).

Martin Mayer, current Chief of the Regulatory Functions Branch, was interviewed on June 21, 2016. When asked about the COE's regulatory authority inside the levee system, Mr. Mayer responded that the COE retains regulatory authority over wetlands and waters inside the system and the COE's policy has been that activities, requiring permits inside the system, are considered mitigated (per. comm. 2016).

The area south of Yankee Canal remains a functioning tidal marsh, and some questions remain as to whether the mitigation conducted for the larger project in 1992, did in fact, offset impacts to this area (Morgan 2016a).

Included in Appendix C of the 1987 Mitigation Report is a copy of the consistency letter from C. G. Groat, Assistant to the Secretary of LDNR, to Colonel Eugene S. Witherspoon, District Engineer, U. S. Army Corps of Engineers, New Orleans District (COE), dated September 20, 1985, regarding the (C19840312) Larose to Golden Meadow Hurricane Protection Project and Mitigation of a Weir and Levee in Pointe au Chien WMA, Lafourche Parish, LA. The letter states that the project ...has been found to be consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program (LCRP) as required in Section 307 (c)(1)(2) of the Coastal Zone Management Act of 1972, as amended.

Coastal Zone Consistency No. C19840312 approved the proposed Larose to Golden Meadow Hurricane Protection Project and Mitigation of a Weir and Levee in Pointe au Chien WMA, as written. The 1985 consistency determination was not a negative finding and the OCM did not state that the proposed mitigation project was inadequate. The determination did not include any conditional stipulations and/or requirements that would allow for additional and/or supplemental mitigation or special conditions to be added on in the future.

One only needs to review the public records and permit file to verify that when the mitigation plan was developed, vetted and approved by the federal and state regulatory and resource agencies in the mid-1980s, there were no performance standards, monitoring requirements, or language indicating that additional mitigation would be required as a means of addressing potentially poor results from the implementation of the mitigation project at Pointe au Chien

WMA. The plan was accepted as written and the SLLD not only constructed the project, but replaced the two weirs with more sophisticated structures at a later date per the request of the LDWF.

OCM will defer compensatory mitigation requirements to that required by the federal resource agencies through the U. S. Army Corps of Engineers (Morgan 2016a).

The SLLD acknowledges and appreciates the OCM taking this viewpoint. To further clarify their position, the SLLD offers the following OCM correspondence excerpts and SLLD response:

The 1986 LGM mitigation program included enhancement and restoration of fresh/intermediate marsh, brackish/saline marsh, and shallow open water areas. However, this program did not include preservation, restoration, or enhancement of any swamp or bottomland hardwood habitats. Because of the lack of forested mitigation features in the 1986 LGM mitigation program and the new mitigation requirements established via WRDA 1986 and WRDA 2007, the general approach to mitigating additional wetland and BLH-Dry impacts resulting from LGM Hurricane Protection Project changes subsequent to these laws has been (Morgan 2016b):

- 1) All habitat impacts within the levee system right-of-way established in 1985 have been fully mitigated by the 1986 mitigation program, including impacts to marsh, open water, swamp, and bottomland hardwood habitats;*
- 2) Impacts to marsh and open water habitats located outside the 1985 right-of-way but on the protected side of the levee system have been fully mitigated by the 1986 mitigation program (and may have been over-mitigated);*
- 3) Proposed new impacts to swamp, BLH-Wet, and BLH-Dry habitats situated outside the 1985 right-of-way, whether on the protected side or the flood side of the levee system, will typically require separate mitigation (e.g., 1986 mitigation program does not compensate for such forested impacts since it did not include "type-for-type" mitigation for such habitats);*
- 4) Proposed new impacts to marsh habitats and some, but not necessarily all, open water habitats situated on the flood side of the levee system will typically require mitigation."*

The SLLD is in full agreement with Items 1, 2 and 4, but strongly opposes Item 3. The SLLD points to the understanding as to the mitigation requirement and project that were agreed upon by federal and state agencies as well as the levee district. The SLLD believes it has honored its compensatory wetland mitigation requirements for all wetland habitats that were previously impacted and/or encircled by the ring levee system. While in-kind and BLH-dry may be mitigation considerations and/or requirements at the current time, they certainly were not during the 1980s. It is simply unreasonable to ask the SLLD to mitigate twice for the same habitat.

...The applicant shall be required to make provisions to monitor the dissolved oxygen in the retention area and to have immediately available means to prevent a fish kill from the dissolved oxygen (Morgan 2016a).

OCM will condition its coastal use permit to address the remaining issues of water quality and monitoring for water quality and health and the sustainability of estuarine organisms (Morgan 2016a).

The SLLD is faced with the continuing need to upgrade/maintain the hurricane protection system and provide ongoing protection to communities (i.e., Larose, Cut Off, Galliano and Golden Meadow) and public investments, including the SLLD's 1 percent sales and use tax for levee/drainage/flood protection measures that has been strongly supported by voters since 2006. Now, more than 30 years after the levee and mitigation projects were approved, the OCM has asked the SLLD to accept a water quality requirement as a special condition to a coastal use permit (P20100242) that is intended to make the existing forced drainage system more effective and, thus, safer for its inhabitants. For the record, there has never been a fish-kill event in the area of question since the SLLD has been in existence.

While the OCM may take the position that the water quality special condition is just that - a special condition and not compensatory wetland mitigation – the SLLD does not agree. The SLLD sees it as a long-term and costly requirement that is contrary to what was agreed on by the agencies in the mid-1980s. Purchasing, operating, maintaining and replacing scientific and mechanical water quality improvement equipment and the time needed for SLLD personnel to execute all tasks associated with the monitoring and prevention program would be a burden on levee district resources.

The SLLD respectfully requests that the OCM consider withdrawing this additional requirement as the entire footprint of the Larose to Golden Meadow Hurricane Protection Project has been fully mitigated for through the implementation of the SLLD's mitigation project at Pointe au Chien WMA in 1992.

References

Curole, Windell

2017. General Manager, South Lafourche Levee District, Galliano, LA. Personal communications with Ed Fike on various dates, 2017.

Groat, C. G.

1985. Assistant to the Secretary, Coastal Management Division, Louisiana Department of Natural Resources, Baton Rouge, LA. C840312, Coastal Zone Consistency to Corps of Engineers (New Orleans District) on Larose to Golden Meadow Hurricane Protection Project and of a weir and levee in Point au Chien WMA, Lafourche Parish, LA. September 20, 1985.

Mayer, Martin

2016. Chief, Regulatory Functions Branch, U. S. Army Corps of Engineers, New Orleans District, New Orleans, LA. Personal communication with Ed Fike on June 21, 2016.

Morgan, Karl L.

2016a. Permits & Mitigation Administrator, Louisiana Department of Natural Resources, Office of Coastal Management, Baton Rouge, LA. Correspondence, dated regarding Coastal Use Permit Application No. P20100242 to J. Wayne Plaisance, Inc., Attn: Andre Uzee, Galliano, LA, dated October 27, 2016.

2016b. Permits & Mitigation Administrator, Louisiana Department of Natural Resources, Office of Coastal Management, Baton Rouge, LA. Correspondence regarding Coastal Use Permit Application No. 20150747 to Picciola & Associates, Inc., Attn: Joseph Picciola II, Galliano, LA, dated February 17, 2016.

U. S. Army Corps of Engineers, New Orleans District

1987. *Mitigation Report, Larose to Golden Meadow, Louisiana Hurricane Protection Project.* April 1987.

Ventola, Ron

2000. Chief, Regulatory Functions Branch, U. S. Army Corps of Engineers, New Orleans District, New Orleans, LA. Correspondence to Lafourche Parish Council, dated May 11, 2000.