



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

March 15, 2021

Mr. Charles Reulet
Administrator
Louisiana Department of Natural Resources
Office of Coastal Management
617 North Third Street, Suite 1078
Baton Rouge, LA 70802

Dear Mr. Reulet,

This letter provides the consistency determination and supporting information pursuant to the Coastal Zone Management Act (CZMA) (16 USC §§ 1451 *et seq.*) and applicable federal regulations at 15 CFR Part 930, Subpart C for federal agency activities. The DWH Louisiana Trustee Implementation Group (LA TIG) is comprised of federal trustees: the U.S. Department of the Interior (DOI), the National Oceanic and Atmospheric Administration (NOAA), the U.S. Department of Agriculture (USDA), and the U.S. Environmental Protection Agency (EPA) and state trustees: Louisiana Coastal Protection and Restoration Authority (CPRA), Louisiana Department of Wildlife and Fisheries (LDFW), Louisiana Oil Spill Coordinator's Office (LOSCO) and Louisiana Department of Environmental Quality (LDEQ). NOAA is submitting this letter as the Lead Federal agency, on behalf of the Federal Trustees on the Louisiana TIG. Please note that a Coastal Use Permit has also been requested for this project pursuant to a June 2016 joint permit application submitted by CPRA.

The federal trustees respectfully request that the Louisiana Department of Natural Resources (LDNR) concur with the consistency determination that the project proposed¹ in the Louisiana TIG Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin and subsequent Draft Phase II Restoration Plan (RP) #3.2: Mid-Barataria Sediment Diversion (MBSD) and its accompanying Draft Environmental Impact Statement² (DEIS) is consistent to the maximum extent practicable with the enforceable policies of the Louisiana Coastal Resources Program (LCRP). Under National Oceanic and Atmospheric Administration (NOAA) CZMA regulations at 15 CFR § 930.41, LDNR's concurrence shall be presumed if the state has not responded within 60 days from receipt of this letter, unless LDNR and the federal trustees agree to an alternative review period.

¹ Maps of the proposed project area are included in the DEIS as Figures 1.1-1 and 1.1-2, and attached hereto as Attachment A.

² Usually the National Environmental Policy Act compliance document and Oil Pollution Act Restoration Plan are combined for efficiency, but in this case they are separate because the project was proposed by Louisiana and subject to applicable permitting processes prior to being proposed for consideration by the LA TIG.

Prior to the LA TIG evaluation of the proposed MBSD Project, the USACE initiated scoping for the MBSD Project EIS. To increase efficiency, reduce redundancy, and be consistent with federal policy and Title 40 CFR §1506.3, the four federal trustees in the LA TIG decided to participate as cooperating agencies in the development of a single MBSD DEIS. As the lead federal agency, the USACE has primary responsibility for preparing the DEIS. The LA TIG is relying on the DEIS to evaluate potential environmental effects of the restoration alternatives proposed in the Draft Phase II RP #3.2. The Draft Phase II RP #3.2 and the DEIS are being released concurrently to enable public review of both documents simultaneously.

Background

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon* experienced an explosion, leading to a fire and its subsequent sinking in the Gulf of Mexico. These events resulted in the discharge of several millions of barrels of oil into the Gulf over a period of approximately three months. In addition, various response actions were undertaken, including, but not limited to the application of approximately hundreds of thousands or more gallons of dispersants to the waters of the spill area in an attempt to minimize impacts from spilled oil. These events are hereafter collectively referred to as the DWH Oil Spill. The magnitude of the DWH Oil Spill and the U.S. Coast Guard-directed efforts to contain and clean up the oil across the Gulf were massive and unprecedented. The DWH Oil Spill impacted coastal and oceanic ecosystems ranging from the deep ocean floor, through the oceanic water column, to the highly productive coastal habitats of the northern Gulf of Mexico. This includes estuaries, shorelines and coastal marshes as well as ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas. These fish and wildlife species and their supporting habitats provide a number of important ecological and recreational services.

After the DWH Oil Spill, the designated state and federal natural resource trustees, (collectively the trustees) conducted a natural resource damage assessment (NRDA) for injuries resulting from the DWH Oil Spill in order to restore natural resources and compensate the public for the harm the spill caused to natural resources, including lost use of these resources by the public. In February 2016, the trustees issued a Final Programmatic Damage Assessment and Restoration Plan/Programmatic Environmental Impact Statement (PDARP/PEIS) under the Oil Pollution Act (OPA) and the National Environmental Policy Act (NEPA) to analyze alternative approaches to implementing restoration and to guide restoration decisions. On April 4, 2016, the trustees reached and finalized a settlement of their natural resources damage claims with BP Exploration & Production, Inc., a responsible party for the DWH Oil Spill, through a Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana.

The LA TIG has undertaken Draft Phase II RP #3.2 to contribute to the restoration of wetland, coastal, and nearshore habitat resources and services injured by the DWH Oil Spill, specifically in Barataria Basin, Louisiana. The purpose of restoration, as discussed in this document and detailed more fully in the Final Programmatic Damage Assessment and Restoration Plan and

Final Programmatic Environmental Impact Statement³ (Final PDARP/PEIS) (*DWH* Trustees, 2016), is to make the environment and the public whole for injuries resulting from the DWH Oil Spill by implementing restoration actions that return injured natural resources and services to baseline conditions and compensate for interim losses in accordance with OPA and associated NRDA regulations. The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. The LA TIG previously prepared the *Strategic Restoration Plan and Environmental Assessment #3: Restoration of Wetlands, Coastal, and Nearshore Habitats in the Barataria Basin* (Final Phase I SRP/EA #3) as a first phase plan, selecting project alternatives to undergo engineering and design (E&D) until which time during the E&D process enough information is developed to undergo further OPA and NEPA analysis in a second phase plan. The SRP/EA #3 identified and selected the MBSD restoration project for further E&D evaluation. The Louisiana TIG is now proposing the MBSD restoration project for full implementation in its Louisiana TIG Draft Phase II Restoration Plan #3.2.

All activities undertaken by TIGs are required to be consistent with the PDARP/PEIS. That programmatic plan identifies Coastal Zone Management Act federal consistency among the relevant authorities to be examined by the TIGs to ensure continuing compliance with applicable authorities for actions proposed in TIG restoration plans⁴. Whether and to what extent an authority applies to the trustees' restoration actions depends on the specific characteristics of a particular project, among other things. Consequently, NOAA, on behalf of the Louisiana TIG Federal agencies has now evaluated this particular project for consistency with the enforceable policies under the LCRP.

Louisiana TIG Draft Restoration Plan 3.2 and Environmental Impact Statement for the Proposed MBSD restoration project

The Louisiana TIG is developing the proposed MBSD restoration project within the Barataria system in southeast Louisiana. The Louisiana TIG is considering selection of a preferred design alternative for the MBSD restoration project by and through Draft Phase II Restoration Plan #3.2 and the accompanying Draft Environmental Impact Statement⁵ to help restore habitat and ecosystem services injured in the northern Gulf of Mexico and specifically Barataria Basin as a result off the DWH oil spill. NOAA is the lead federal agency; USEPA, DOI, and USDA are federal cooperating agencies for this restoration plan that proposed to fund the preferred design alternative. CPRA is the implementing agency for the MBSD restoration project.

The proposed MBSD restoration project is a controlled sediment and freshwater intake diversion structure in Plaquemines Parish on the right descending bank of the Mississippi River at River Mile 60.7, with a conveyance system that would discharge sediment, fresh water, and nutrients

³ The Final PDARP/PEIS and Record of Decision (ROD) can be found at: <https://www.gulfspillrestoration.noaa.gov/restoration-planning/gulf-plan/>

⁴ See e.g., sections 6.9 and 6.9.4 of the PDARP/PEIS

⁵ The Draft Restoration Plan and Draft Environmental Impact Statement are available at https://www.gulfspillrestoration.noaa.gov/sites/default/files/2021-03%20LA%20MBSD%20Draft%20Plan%20Mid-Barataria-Restoration-Plan_Main.pdf and <https://www.mvn.usace.army.mil/Missions/Regulatory/Permits/Mid-Barataria-Sediment-Diversion-EIS/> respectively. USACE is the lead federal agency for the EIS, which is being made available for public review concurrent with the Restoration Plan. As the USACE EIS will inform the final NEPA decision for the Louisiana TIG Restoration Plan, the TIG agencies are cooperating agencies on the EIS.

from the River into an outfall area within the mid-Barataria Basin. The Trustees expect that when operational the MBSD restoration project could discharge up to 75,000 cubic feet per second of freshwater, sediment and nutrients when River flows are at their highest, and with a background flow of approximately 5,000 cfs to protect, sustain, and maintain newly vegetated or recently converted fresh, intermediate, and brackish marshes near the diversion outflow.

After considering impacts and benefits, the trustees are recommending a diversion with a maximum capacity of 75,000 cfs (with actual flow through the diversion dependent on the flow of the Mississippi River). The trustees fully evaluated a smaller-capacity diversion with a maximum capacity of 50,000 cfs and found that such a diversion would provide substantially less benefit in marsh preservation and restoration, with only a small reduction in adverse impacts and a slight cost reduction.

The trustees also fully evaluated a larger-capacity diversion with a maximum capacity of 150,000 cfs. While the marsh creation benefits of such a large diversion would be significantly greater, the collateral injuries and cost would also increase to levels unacceptable to the trustees.

LCRP Consistency Review

The federally approved LCRP is comprised of a network of agencies with authority in the state's coastal zone. The lead state agency for the LCRP is the Louisiana Department of Natural Resources. The LCRP is built around the goals outlined in the Louisiana Revised Statutes Article 49, § 214.21 Subpart C. The potential impacts are thoroughly examined in the Draft EIS, specifically in Chapters 3 and 4, which inform the Trustee's decision to implement the project according to OPA. Based upon these analyses, the federal trustees have determined that, pursuant to the CZMA and 15 CFR § 930.32, this activity is consistent to the maximum extent practicable with the enforceable policies of the LCRP.

The principle policies of the LCRP that are potentially relevant to restoration actions described in the Draft RP #3.2 and the accompanying Draft EIS are those promulgated in the Louisiana Administrative Code at Title 43, Part 1, Chapter 7, Subchapter B ("Coastal Use Guidelines"): specifically:

- §701 Guidelines Applicable to All Uses
- §703 Guidelines for Levees
- §705 Guidelines for Linear Facilities
- §707 Guidelines for Dredged Spoil Deposition
- §709 Guidelines for Shoreline Modification
- §711 Guidelines for Surface Alterations
- §713 Guidelines for Hydrologic and Sediment Transport Modifications
- §717 Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters.

§701 Guideline Applicable to All Uses

Pursuant to LAC Title 43 §701 all uses subject to LCRP may be subject to the requirements of more than one guideline or section of guidelines and all applicable guidelines must be complied

with; additionally, uses subject to the LCRP shall conform with applicable state air and water quality standards and regulations and with other laws incorporated into the LCRP. The proposed projects shall adhere to all applicable guidelines and do not violate any state air or water quality standards.

Pursuant to LAC Title 43 §701 all uses subject to the LCRP shall not have an adverse impact on the natural supply of sediment and nutrients to the coastal system, economic impacts, concentration of oxygen, streams, wetlands, and other natural biologically valuable areas, social patterns, temperature regimes, cumulative impacts, turbidity and suspended solids water flow and natural circulation patterns, historical, cultural or archeological resources, on wildlife and fisheries habitats (especially the critical habitat of endangered species), or on public access to tidal and submerged lands, navigable waters, beaches and other public recreational resources. The proposed Project would result in changes to the general character of the Barataria Basin, including, but not limited to, salinity, temperature, land accretion, and water quality. These changes are generally either adverse or beneficial depending on habitat tolerances of area plants, animals, and people, with moderate to major adverse impacts anticipated to occur only on those plants and animals that are unable to tolerate the modified habitat, and subsequently to the people that rely on the area plants and animals for economic, recreational, or other purposes. In many cases, adverse impacts on the Barataria Basin resources are higher near the diversion outfall, where salinity, temperature, water level, and sedimentation impacts are greatest, and decrease with distance from the outfall. Through development of the Draft EIS for the Draft RP 3.2, we were able to evaluate consistency with the State's enforceable policies. Detailed information about potential environmental effects identified for the proposed project are available in the Draft EIS⁶. Specifically, impacts to sedimentation and water quality are contained within Section 4.5 of the DEIS. Impacts to cultural or social patterns are examined in sections 4.25.13 through 4.25.15 of the DEIS.

§703 Guidelines for Levees

Pursuant to LAC Title 43 §703, hurricane or flood protection levee systems shall be designed, built, and thereafter operated and maintained utilizing best practical techniques to minimize disruptions of existing hydrologic patterns, and the interchange of water, beneficial nutrients, and aquatic organisms between enclosed wetlands and those outside the levee system. Construction of the MBSD restoration project intake channel will alter a portion of the Mississippi River & Tributaries (MR&T) Levee, a riverine flood protection system, and the outfall channel will alter a portion of the future New Orleans to Venice Non-Federal Levee (NOV-NF-W-05a), a hurricane protection system, and the existing non-federal back levee (see Chapter 1, Section 1.3 of the DEIS). The portion of the MR&T Levee removed during construction will be replaced with flared training walls that tie into the existing MR&T Levee at each end to maintain existing riverine flood protection. The guide levees on either side of the conveyance channel would be built to an elevation of approximately 15.6 feet on the protected side of the NOV-NF-W-05a.1 levee to provide protection against storm surge; on the flood side of the NOV-NF-W-05a.1 levee, the guide levees on either side of the conveyance channel would transition to an elevation of 9.5 feet (see Chapter 2, Section 2.8.1.1 of the DEIS).

⁶ See Draft EIS Chapters 3 and 4, concerning the affected environment and environmental consequences respectively.

The constructed conveyance channel will bisect existing polderlands between the MR&T Levee and the NOV-NF-W-05a.1 levee. Pursuant to the Draft RP 3.2 and the DEIS, drainage will be provided through siphons beneath the conveyance channel that route to the existing Wilkinson Canal Pump Station for discharge into the Barataria Basin (see Chapter 2, Section 2.8.1.1 of the DEIS).

§707 Guidelines for Dredged Spoil Deposition

Pursuant to LAC Title 43 §707, spoil shall be used beneficially to the maximum extent practicable to improve productivity or create new habitat, reduce or compensate for environmental damage done by dredging activities, or prevent environmental damage. Also pursuant to LAC Title 43 §707, spoil shall not be disposed of on marsh, known oyster or clam reefs, or in areas of submersed vegetation to the maximum extent practicable. Pursuant to Chapter 2, section 2.8.1.1 of the DEIS, material excavated during construction of the conveyance channel that is not re-used for the construction of project features (such as the conveyance channel guide levees) will be used beneficially within identified beneficial use placement areas (see Figure 1.1-2 in Attachment A) in the outfall area.

§711 Guidelines for Surface Alterations

Pursuant to LAC Title 43 §711(B) public works such as levees or drainage improvements, which would include the MBSD project, shall to the maximum extent practicable, ensure they are consistent with the other guidelines, as well as the other relevant state, local, and regional plans. The TIG has taken extensive efforts to ensure that the design of the MBSD project takes into account these guidelines, and utilizes best practical techniques to minimize present and future adverse impacts.

§713 Guidelines for Hydrologic and Sediment Transport Modifications

Pursuant to LAC Title 43 §713, the controlled diversion of sediment-laden waters to initiate new cycles of marsh building and sediment nourishment shall be encouraged and utilized, whenever such diversion will enhance the viability and productivity of the outfall area. Such diversion shall incorporate a plan for monitoring and reduction and/or amelioration of the effects of pollutants present in the freshwater source. Pursuant to the Draft RP 3.2 and Draft EIS, the proposed project will not result in saltwater intrusion or land subsidence. The essence of the project is in fact to reintroduce freshwater and sediment into areas affected by saltwater and subsidence

The trustees' analysis in Draft RP 3.2 and the Draft EIS has determined that, as with many environmental restoration projects, there would be ecological tradeoffs associated with any of the large-scale sediment diversion alternatives. The benefits would be significant and would primarily derive from the creation of thousands of acres of marsh that, with a steady supply of Mississippi River sediment, would be sustained even in the face of rising sea levels and coastal erosion. After 50 years of operation of a diversion with a capacity of 75,000 cfs, over 20% of the

marsh in the Barataria Basin is projected to have been created or sustained by the diversion (see Chapter 4, Section 4.6 of the DEIS). The trustees believe that a sediment diversion is the only way to achieve a self-sustaining marsh ecosystem in the Barataria Basin.

The sustained marsh is expected to benefit many fish and wildlife species in the basin, including red drum, largemouth bass, blue crab, white shrimp, Gulf menhaden, and migratory waterfowl. These benefits to fish and wildlife species would translate to benefits to recreational users who watch, fish, or hunt those species. In addition, these benefits would not only accrue in the Barataria Basin but, through the transport of marsh productivity, also in the offshore ecosystems of the northern Gulf of Mexico (see Chapter 4, Section 4.14 of the DEIS).

The trustees recognize that any of the large-scale sediment diversion alternatives considered would also result in injuries to some natural resources. Reconnecting the river to the basin to restore an estuary that has been degrading and becoming more saline for almost a century would produce significant changes to current conditions in the Barataria Basin, which will negatively affect the species that currently reside in the basin. The primary driver of this change would be a reduction in salinity; any of the large-scale sediment diversion alternatives considered in the Draft RP #3.2 would result in a substantial reduction in salinity in portions of the basin. That reduction in salinity would negatively impact fish and wildlife species that rely on higher saline waters and have moved further into the estuary as salinities have increased due to the severed connection between the river and the basin. Key species that would be affected include dolphins, brown shrimp, and oysters (see Chapter 4, Section 4.14 of the DEIS).

The large-scale sediment diversion alternatives considered would also affect storm hazards and tidal flooding in the vicinity of the diversion. The diversion would restore and expand existing marshes and thereby reduce storm surge and flooding in the communities north of the diversion. At the same time, in the months when the diversion is operating above minimum capacity, the diversion is also expected to somewhat accelerate tidal flooding and storm surge in communities south of the diversion that remain outside of levee protection (from Myrtle Grove south to Grand Bayou). During the first several decades of operation of the diversion, these communities could experience increases in the intensity and duration of flooding impacts; however, within 50 years, sea level rise and subsidence would overtake the effects of the diversion and return as the primary forces driving flooding in these communities (see Chapter 4, Section 4.13.3.1 and Section 4.3.3.2 of the DEIS).

The trustees are committed to continuing efforts to restore the resources that would be adversely affected by the diversion, many of which were also injured by the DWH oil spill. This Draft RP 3.2 includes proposed strategies to help avoid, minimize, and mitigate collateral injuries to these resources. These include proactive strategies to address the communities, individuals, and stakeholders that rely on the resources that could be harmed by the proposed diversion. The Monitoring and Adaptive Management Plan is an appendix to the Draft RP 3.2 and as Appendix R of the Draft EIS.

§717 Guidelines for Uses that Result in the Alteration of Waters Draining into Coastal Waters.

Pursuant to LAC Title 43 §717, construction activities that affect coastal waters and wetlands shall be designed to preserve or enhance existing water quality, volume, and flow to the

maximum extent practicable. Pursuant to the Draft RP 3.2 and Draft EIS, the diversion will impact the volume and flow of Mississippi River water, but towards the overall benefit of rejuvenating and nourishing the wetland systems in the Barataria Basin. The extent of the benefits provided by the project are detailed in the alternative analysis conducted in section 2.8.1 of the DEIS.

Conclusion

Based on our review of 15 CFR Part 930, Subpart C and the enforceable policies of the LCRP, and after evaluating the activities for each proposed design alternative, the federal trustees of the Louisiana TIG find that, this restoration action proposed in the draft restoration plan is consistent to the maximum extent practicable with the applicable enforceable policies of the state's federally-approved LCRP. If selected and implemented, the proposed project would comply and be implemented in a manner consistent with the LCRP. This letter submits these analyses and determinations for review by the State coincident with public review of the Draft RP and Draft EIS 3.2. We thank you in advance for your assistance and concurrence.

Please contact Mel Landry at mel.landry@noaa.gov and (225) 425-0583 if you have technical questions or Jared Piaggione at jared.piaggione@noaa.gov and (301) 651-4393 for legal questions. Please note that due to the Coronavirus emergency, most federal staff are teleworking and email is the best means to initiate contact.

Sincerely,

Rachel W. Sweeney
Program Manager, Deepwater Horizon Restoration Program
National Oceanic and Atmospheric Administration

cc: Sarah Clardy, Louisiana TIG Representative for DOI
Doug Jacobson, Louisiana TIG Representative for EPA
Ron Howard, Louisiana TIG Representative for USDA
Matt Mumfrey, Louisiana TIG Representative for Louisiana

ATTACHMENT A: FIGURES

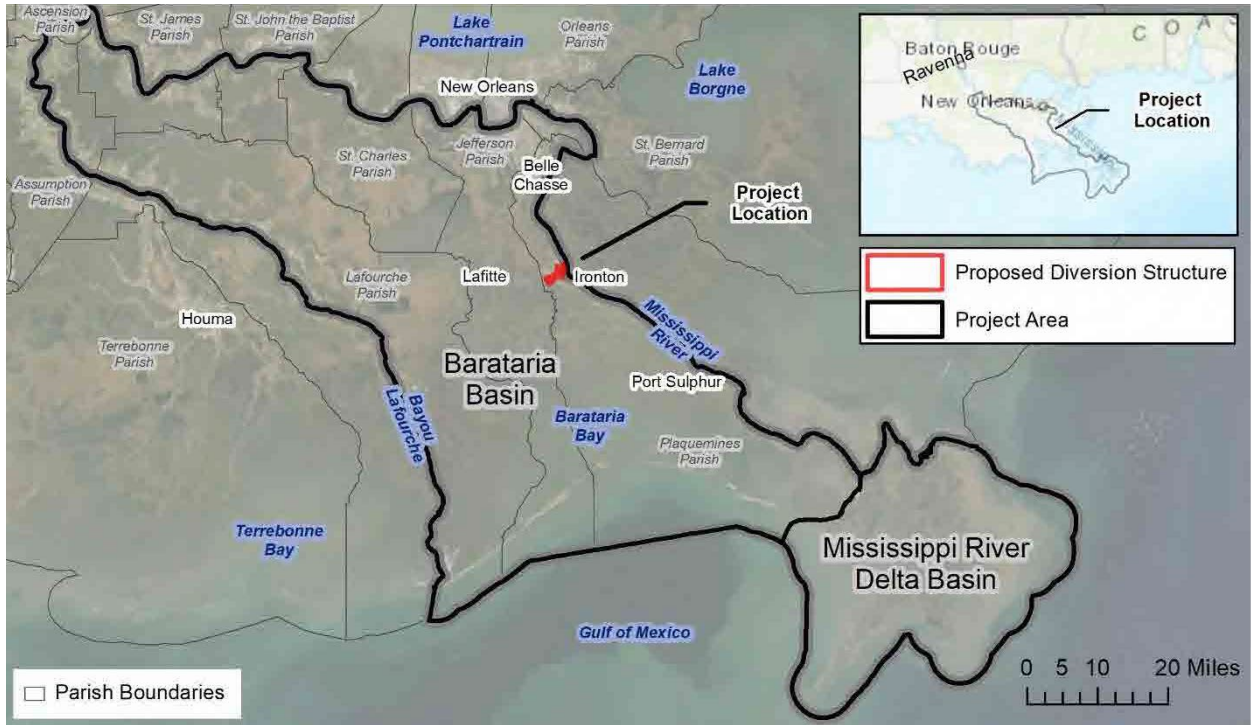


Figure 1.1-1. Project Area (Barataria Basin and Western Portion of the Lower Mississippi River Delta Basin).

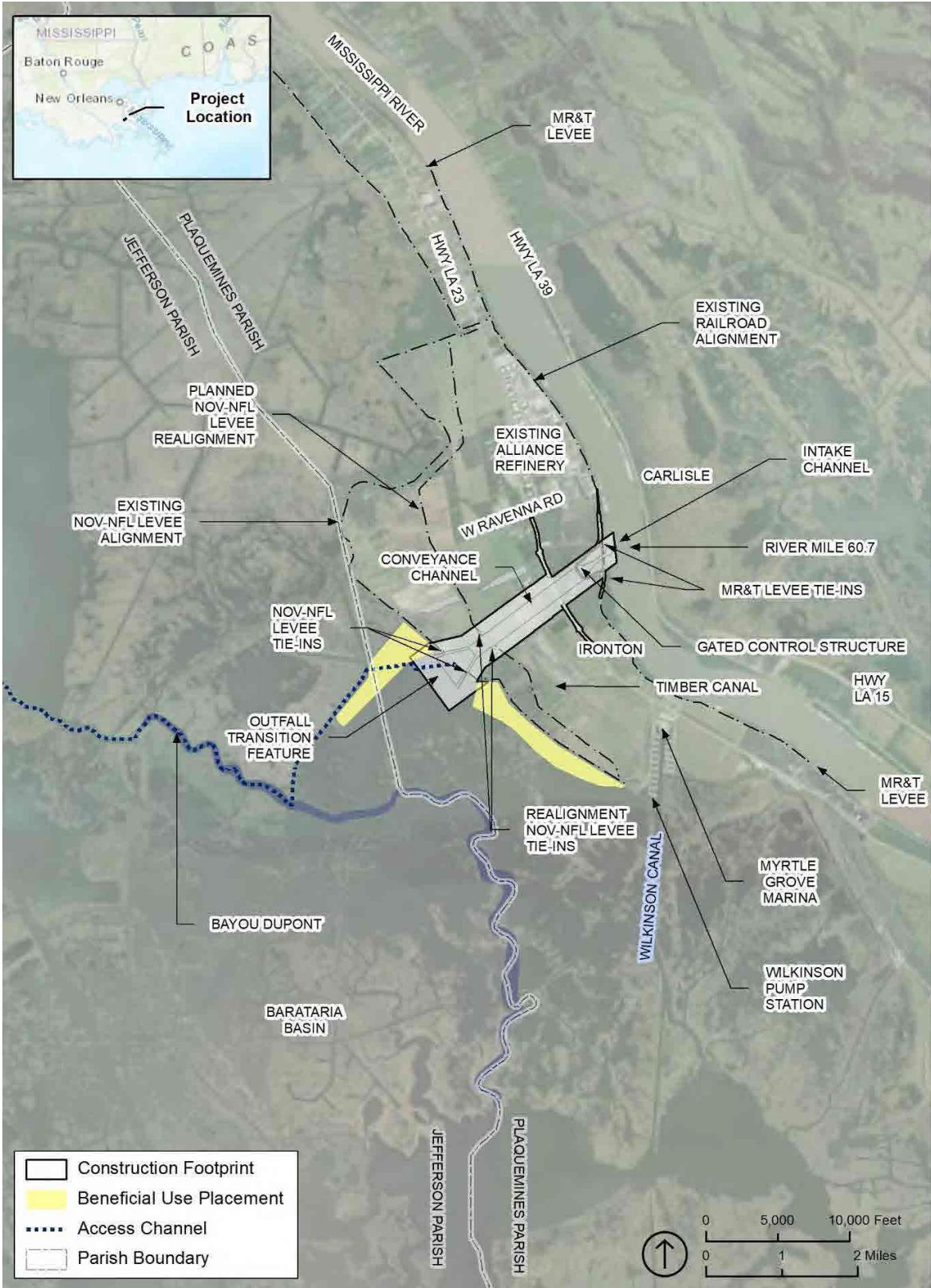


Figure 1.1-2. Project Site Map.