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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

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~~2011 SEP 29 PM 4: 45~~
~~REGIONAL HEARING CLERK~~
~~EPA REGION VI~~

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In the Matter of:

Bridgeland Development, L.P.,
f/k/a GGP-Bridgeland, L.P.,
Texas,

Respondent.

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DOCKET NO. CWA-06-2011-2718

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and forever conclude the above styled proceeding (the "Proceeding"), whereby Bridgeland Development, L.P. f/k/a GGP-Bridgeland, L.P. ("Respondent"), in exchange for a full and final release of the matters at issue in the Proceeding, as identified below, will pay a Class II civil penalty as assessed by EPA in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3), and as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits." EPA and Respondent are referred to collectively hereinafter as the "Parties."

2. The Parties agree that settlement of the Proceeding without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving the Proceeding. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

3. Respondent admits the jurisdictional allegations set forth herein for the purposes of this CAFO; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law set forth herein for the purposes of this Proceeding.

4. This CAFO states a claim(s) upon which relief may be granted.

5. Respondent expressly waives any right to contest, for the purposes of this CAFO, the Findings of Fact or Conclusions of Law contained herein, and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony and without adjudication of any issue of law or fact at issue in the Proceeding, the parties agree to the terms of this CAFO and to its issuance. Respondent consents, in order to avoid the nuisance, risk and expense of litigation of the matters at issue in the Proceeding, to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Respondent is a limited partnership under the laws of the State of Maryland (the "State"), with its principle place of business located at 13355 Noel Road, Suite 950, Dallas, Texas, 75240, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. §§ 122.2 and 232.2.

8. Within the times relevant to the violations alleged in paragraphs 9 and 10 of this CAFO, Respondent was in the process of constructing the Bridgeland Development. The Development is an 11,000 acres proposed community, located approximately 2.5 miles south of Cypress, Texas at 23720 House Hahl Road, Cypress, Harris County, Texas 77433.

9. From on or about July 2006 to on or about August 2007, Respondent is alleged to have filled jurisdictional wetlands #37 and #38, and is alleged to have filled and altered a portion of stream K-150. These alleged actions account for approximately twenty (20) acres of waters of the United States, including wetlands (see Attachment A enclosed).

10. From on or about January 2007 to on or about December 2010, Respondent is alleged to have filled jurisdictional wetlands 1, 2, 3, 4, 5, 6 and 7, and is alleged to have filled and

excavated approximately 300 feet of stream K-151. These alleged actions account for approximately twenty seven (27) acres of waters of the United States, including wetlands (see Attachment A enclosed). The purported incidents identified in paragraphs 9 and 10 of this CAFO are referred to collectively hereinafter as the "Alleged Occurrences."

11. During the time periods relevant to the Alleged Occurrences, the approximately forty seven (47) acres of wetlands, as identified in paragraphs 9 and 10 and Attachment A of this CAFO, are alleged to have been "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

12. During the times periods relevant to the Alleged Occurrences, the discharged dredged material and fill material purportely involved in the Alleged Occurrences are alleged to have been "pollutants" as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

13. During the time periods relevant to the Alleged Occurrences, the equipment purportedly involved in the Alleged Occurrences is alleged to have been a "point source" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to navigable waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

15. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers (the "Corps"), is authorized to issue permits for the discharge of dredged or fill material into navigable waters of the United States.

16. During the time periods relevant to the Alleged Occurrences, Respondent did not have a permit issued by the Corps authorizing the Alleged Occurrences.

17. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class II civil penalty whenever, on the basis of any available information, the Administrator finds that a person violated Section 301 of the Act, 33 U.S.C. § 1311.

18. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, a person is liable for a civil penalty of up to \$11,000 per day for each day that a violation of the Act continues, up to a maximum of \$157,500, for violations that occurred after March 15, 2004 and before to January 12, 2009, and up to \$16,000 per day for each day that a violation of the Act continues, up to a maximum of \$177,500, for violations that occurred after January 12, 2009.

19. EPA notified the State and provided the State an opportunity to consult with EPA regarding a proposed assessment of an administrative civil penalty against Respondent.

20. On August 3, 2011, EPA notified the public of this proposed CAFO through public notices in the Cypress News Newspaper, and afforded the public forty (40) days to comment on the proposed assessment of the civil penalty identified below in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA had not received comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

21. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of one

hundred seventy seven thousand five hundred dollars (\$177,500.00), to settle the Alleged Occurrences as defined in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

22. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov/paygov/>
(enter 'sfo 1.1' in the search field)

When paying by check, the case name and docket number (In the Matter of Bridgeland Development, L.P., f/k/a GGP-Bridgeland, L.P., Docket No. CWA-06-2011-2718) should be clearly marked on the check to ensure credit for payment.

23. Respondent shall send simultaneous notice of payment, including a copy of the check or other proof of payment, to each of the following:

- (a) Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (b) Jim Herrington
Texas AgriLife
Blacklands Research Station
720 East Blackland Road
Temple, TX 76502
- (c) Tucker Henson
Office of Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

24. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

25. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

26. EPA will also assess a \$15.00 administrative handling charge for administrative costs for the first thirty (30) day period after the date payment of the civil penalty is due, and an

additional \$15.00 for each subsequent thirty (30) day period that the civil penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) days after being due. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make payment of the civil penalty may also apply.

27. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay a civil penalty on a timely basis as ordered or assessed pursuant to the Act shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorney's fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty (20) percent of the aggregate amount of such person's outstanding civil penalty and nonpayment penalties accrued as of the beginning of each quarter.

28. Failure by Respondent to pay in full the civil penalty assessed according to the terms of this CAFO by its due date, may subject Respondent to a civil action to collect the assessed civil penalty and any accrued interest and penalties.

29. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the civil penalty, and the terms of this CAFO, shall not be subject to review.

B. INJUNCTIVE RELIEF

30. Within six (6) months from the effective date of this CAFO, Respondent will remove the fill and construct an uncontrolled spillway between the amenity lakes and the K-150

channel to restore base flow into approximately 5,000 linear feet of the K-150 tributary. The uncontrolled spillway will be seeded with appropriate native wetland vegetation at appropriate seeding rates.

C. RELEASE OF RESPONDENT

31. Upon EPA's receipt of payment of the civil penalty as described in paragraph 21 of this CAFO and written confirmation from EPA that Respondent has satisfactorily completed the injunctive relief as described in paragraph 30, EPA hereby releases, waives, acquits and forever discharges Respondent including, without limitation, its current and former affiliates, assigns, heirs, legatees, parents subsidiaries, predecessors, successors, directors, officers, shareholders, employees, attorneys and representatives (each of the foregoing shall be referred to collectively as the "Released Parties"), and holds the Released Parties harmless from any and all claims, liabilities, actions, causes of action and suits, proceedings, expenses, attorney's fees, and demands of every kind or character which relate to the violations of Section 301 of the Act arising from the unpermitted filling of jurisdictional wetlands referred to in paragraphs 9 and 10 of this CAFO.

D. GENERAL PROVISIONS

32. This CAFO shall become effective upon filing with EPA's Regional Hearing Clerk.

33. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

34. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

35. Each party agrees to bear its own costs and attorney's fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601, and any regulations promulgated pursuant to those Acts.

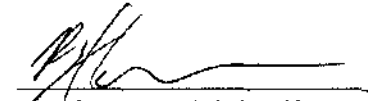
36. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective upon filing with the Regional Hearing Clerk, pursuant to 40 C.F.R. § 22.31(b).

Issuance Date: _____

9-28-11



Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of September, 2010, the original of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was delivered to the following by the method indicated:

U.S. POSTAL SERVICE CERTIFIED MAIL: 7001 0360 0003 6674 7912

Mr. Peter C. Houghton
Bridgeland Development, L.P.
23720 House Hahl Road
Cypress, TX 77433

7001 0360 0003 6674 7929

Aaron Grodin, Esq.
The Howard Hughes Corporation
13355 Noel Road, Suite 950
Dallas, Texas 75240

U.S. POSTAL SERVICE FIRST-CLASS MAIL:

U.S. EPA
Cincinnati Finance Center MS 002
Attention: Michelle Angel
26 West MLK Dr.
Cincinnati, OH 45268-0001

Mary W. Koks, Esq.
MUNSCH HARDT KOPF & HARR, P.C.
Bank of America Center
700 Louisiana Street, Suite 4600
Houston, Texas 77002-2845

HAND DELIVERED:

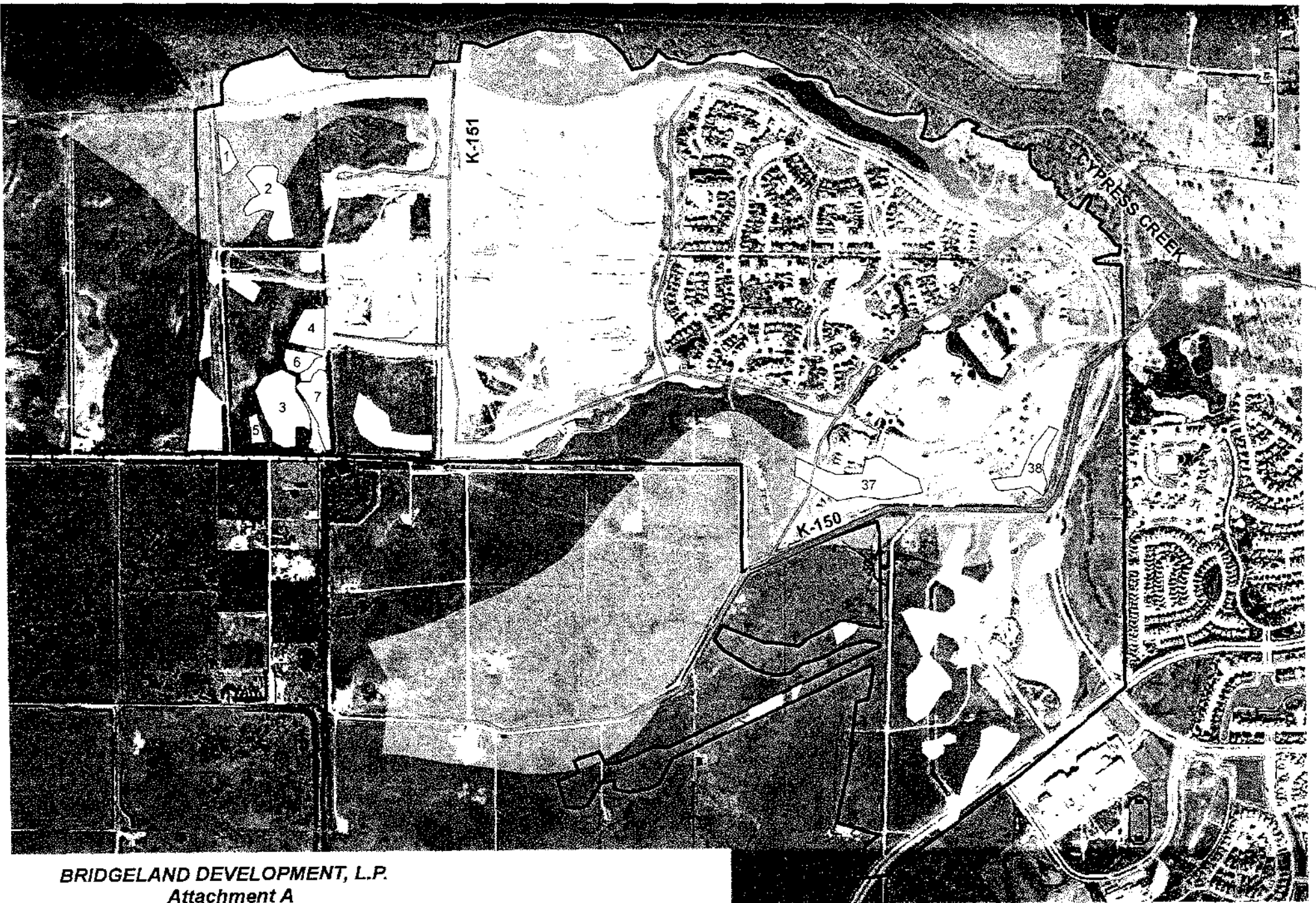
Mr. Jim Herrington
Water Quality Protection Division (6WQ-EM)

Mr. Agustin F. Carbo-Lugo (6RC-M)
Assistant Regional Counsel
Office of Regional Counsel

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U.S. EPA Region 6, 1445 Ross Avenue
Dallas, TX 75202-2733

Sandra Hardy



BRIDGELAND DEVELOPMENT, L.P.
Attachment A

- impacted_stream
- streams
- Impacted_wetlands
- potential_wetlands
- developed_area_boundary

2000_FEMA_Floodplains



FLOODTYPE

- 100_yr_floodplain
- floodway

