

PERMIT APPLICATION - 21859

stated that they believe that re-routing the flow, as proposed in the original plan, would adversely affect drainage and negate much of the increased capacity that Orange County was trying to achieve.

(3) Individual and Organized Groups. Standard Alloys, an adjacent property owner, submitted a letter, dated 20 December 2000, stating that their facility had been subjected to flooding in the past, and that they were concerned that the original proposed work would increase the likelihood of flooding. Standard Alloys requested that the Corps take localized flooding into account in considering the permit application.

Mr. Kenneth C. Matthews, Jr., an adjacent property owner, submitted a letter dated 22 December 2000, objecting to the relocation of Tiger Creek proposed in the initial public notice. Mr. Matthews submitted a second letter, dated 3 May 2000, in response to the first interagency coordination notice, objecting to a proposed 20-foot ditch along the shared property line, objecting to the amount of fill that would be required to raise the site to elevations required by code for hotels and other public buildings, and objecting to excavation of wetlands to obtain fill material.

Mr. H.P. Dubuisson, an adjacent property owner, submitted a letter, dated 6 January 2000, objecting to the project, stating that the relocation of Tiger Creek would cause flooding in Bonnor Slough, and upstream tributary to Tiger Creek.

c. Consideration of Comments. The final revision of the proposed plan removes the elements opposed by the agencies and organized groups. Relocation of Tiger Creek has been completely removed from the plan, as has excavation of the wetlands. Flooding concerns have been adequately addressed by removal of the proposed relocation. Furthermore, the applicant has minimized impacts to the wetlands and maximized the use of the existing uplands on the site.

d. Findings. We find that the applicant has taken all practicable steps to avoid and minimize impacts to aquatic resources. We find that the applicant has adequately addressed the concerns raised by the resource agencies, as evidenced by the no-objection letters submitted by the agencies in response to the final plan. We find that the current plan is the least damaging practicable alternative, and that the applicant will adequately compensate for unavoidable impacts. The following special conditions will be added to the authorization:

1. The permittee will purchase 5 credits from the Neches River Cypress Swamp Preserve mitigation bank prior to the start of construction in the permit area.

PERMIT APPLICATION - 21859

2. The permittee will submit documentation to the Corps Galveston District, verifying that 5 credits were purchased from Neches River Cypress Swamp Preserve mitigation bank, prior to the start of construction in the permit area.

e. Conclusion. We have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application, as well as the stated views of other interested Federal and non-Federal agencies and the concerned public, relative to the proposed work in waters of the United States. This evaluation is in accordance with the guidelines contained in 40 C.F.R. 230 pursuant to Section 404(b) of the Clean Water Act.

Based on our review, we find that the proposed project is not contrary to the public interest and that a Department of the Army permit should be issued.

FOR THE COMMANDER:

B7B
BENNETT

20 Oct 00
(Date)

for Bruce H. Bennett
DON NANNINGA
Chief, Evaluation Section

Complainant's Ex. 46

DEPARTMENT OF THE ARMY PERMIT

Permittee Mr. Henry P. Stevenson, Jr.

Permit No. 21859

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To fill 0.99 acre of wetlands and construct two crossings of Tiger Creek. As mitigation for unavoidable impacts, the applicant will purchase 5 credits (i.e. 5 acres) from the Neches River Cypress Swamp Preserve Mitigation Bank. The project will be conducted in accordance with the attached plans in three sheets.

Project Location: On Tiger Creek and associated wetlands at the 1000 Block of West Freeway Boulevard situated southwest of the intersection of Interstate Highway 10 with Church Road, at Latitude 30°07'06" and Longitude 94°01'58" in Vidor, Orange County, Texas.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2005. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

Rec'd
\$100.00
OCT 24 2000
CJS

Complainant's Ex. 46

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. The permittee will purchase 5 credits from the Neches River Cypress Swamp Preserve mitigation bank prior to the start of construction in the permit area.
2. The permittee will submit documentation to the Corps, Galveston District, verifying that 5 credits were purchased from Neches River Cypress Swamp Preserve mitigation bank prior to the start of construction in the permit area.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - Section 107 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

Complainant's Ex. 46

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

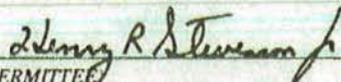
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

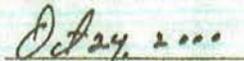
- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


 (PERMITTEE)
 MR. HENRY R. STEVENSON, JR.


 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


 (DISTRICT ENGINEER)
 BRUCE H. BENNETT, LEADER
 NORTH EVALUATION UNIT
 FOR COLONEL NICHOLAS J. BUECHLER

24 OCT 2000
 (DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)

NOV 14 2000

HENRY R. STEVENSON, JR.
2085 GALWAY
VIDOR, TEXAS 77662

21790(01)

U.S. ARMY CORPS OF ENGINEERS
MR. JOHN YAGECIC, P.E.
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

November 1, 2000

RE: Permit No. 21790 authorizing the retention of fill placed in 1.58 acres of wetlands located in Orange County, Texas.

Dear Mr. Yagecic,

On April 10, 2000, Permit No. 21790 was issued to Henry R. Stevenson, Jr. The Permit was to allow me to retain fill placed in 1.58 acres of wetlands to construct a mobile home retail sales facility.

And whereas, mitigation for this impact was to place 7.90 acres of wetlands into a Conservation Easement. I was unable to obtain a conservation easement covering this tract of land. Now it is my desire to withdraw the 7.90 acres of wetlands as mitigation for the 1.58 acre impact.

The only mitigation available for this project is mitigation bank credits. Please allow me to amend Permit No. 21790 to allow the purchase of 8 credits from the Neches River Cypress Swamp Mitigation Bank (NRCS) located in Jefferson County, Texas. The NRCS is owned and operated by Wetland Mitigation Replacement of Southeast Texas (WMRST). WMRST has agreed to set aside 8 credits from its 367 available bank credits to offset the requirements of Permit No. 21790.

Please review my proposal and let me know if it is acceptable to you and the Corps of Engineers.

Sincerely,


Henry R. Stevenson, Jr.



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO
ATTENTION OF

February 20, 2001

Evaluation Section

SUBJECT: Permit No. 21790(01)

Henry Stevenson
2085 Galway Drive
Vidor, Texas 77662-2954

Dear Mr. Stevenson:

Your November 1, 2000 request to amend permit 21790 to purchase 8 acre-credits from the Neches River Cypress Swamp Mitigation Bank, to compensate for impacts to 3.79 acres of wetlands on your project site is approved. Pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Permit 21790 was issued on April 17, 2000 and authorized the retention of fill material placed into 1.58 acres of adjacent, forested wetlands and to place new fill into 2.21 acres of wetlands to construct a mobile home retail sales facility. Originally, you proposed to place 7.90 acres of wetlands in the "Duck Roost" area into a conservation easement. The permit site is located at the Bonner Turnaround, approximately 6,200 feet southwest of the intersection of Texas State Highway 105 and Interstate Highway 10, on the north side of IH 10, at 1200 West Freeway, near Vidor, in Orange County, Texas.

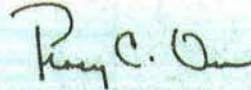
All work is to be performed in accordance with the enclosed amended plans in 3 sheets and the original permit conditions, including the permit expiration date of December 31, 2005, which remain in full force and effect. Please note the Notification of Administrative Appeal Options regarding this authorization as enclosed. This authorization is based on a preliminary jurisdictional determination. In addition to the original permit conditions, the following special conditions are added to your authorization to replace the special condition in the original permit authorization:

1. The permittee will purchase 8 credits from the Neches River Cypress Swamp Mitigation Bank prior to the start of construction in the permit area.
2. The permittee will submit documentation to the Corps Galveston District, verifying that 8 credits were purchased from the Neches River Cypress Swamp Mitigation Bank, prior to the start of construction in the permit area.

-2-

Please notify the District Engineer, in writing, upon completion of the authorized work. A pre-addressed postcard has been enclosed for your convenience.

FOR THE DISTRICT ENGINEER:



Tracy C. Orr
Leader, North Evaluation Unit

Enclosures

Copies Furnished:

Eighth Coast Guard District, New Orleans, LA

U.S. Fish and Wildlife Service, Houston, TX

Texas General Land Office, Austin, TX

Texas General Land Office, La Porte, TX

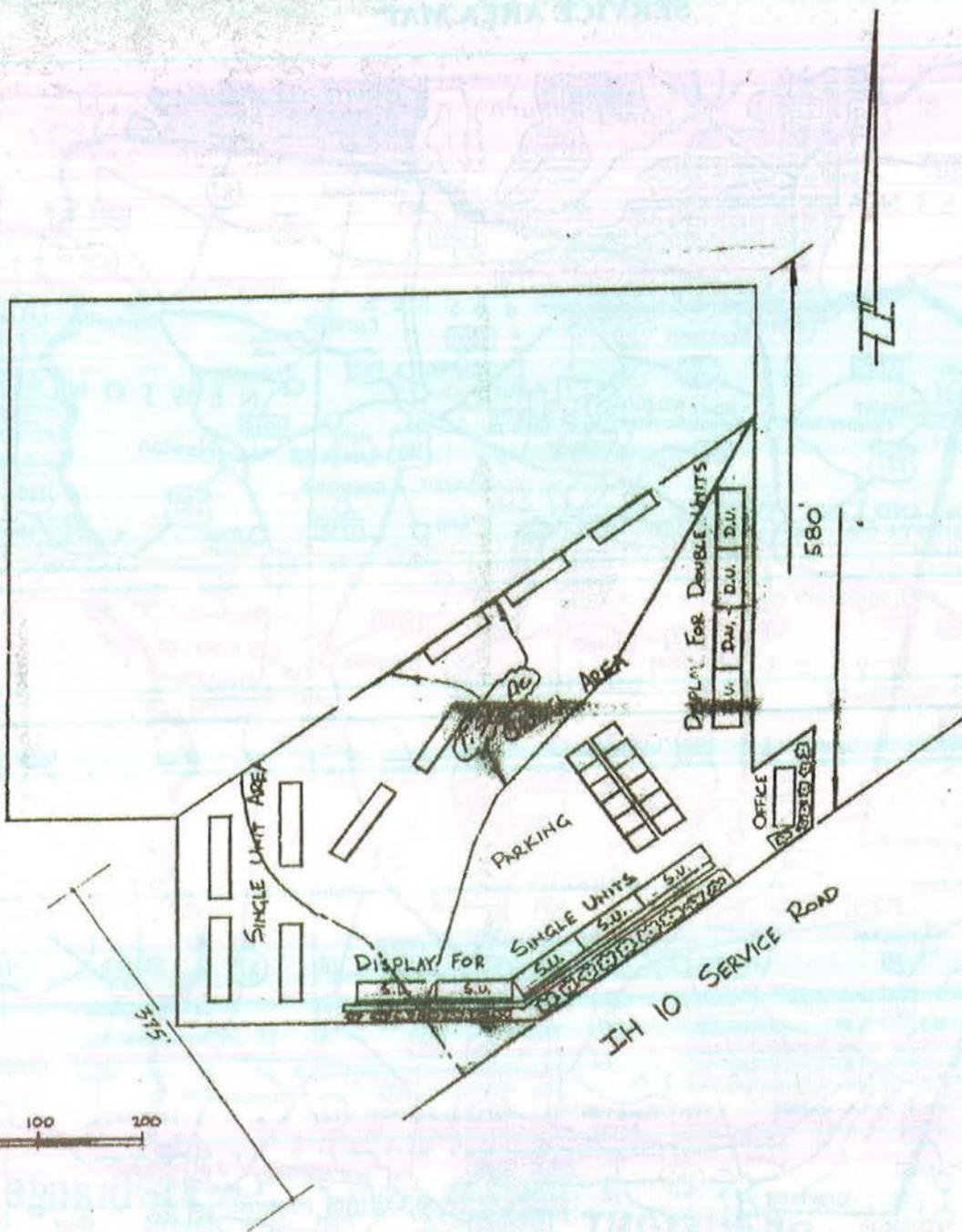
Louisiana Department of Natural Resources, Coastal Management Division, Baton Rouge, LA

Trinity River Authority, Livingston, TX

Northern Area Office, Galveston, TX

Agent: D. P. Consulting Engineers, P. O. Box 2085, Vidor, TX

PERMITTED PLANS



0 100 200

SUBJECT: ACR-LP TRACT - ADJACENT TO IH-10, VIDOR, TEX

BY: J.D.L. CHECKED BY: D.C.P. DATE: 8-12-

21790(01)
 Henry Stevenson
 27 NOV 00
 Page 2 of 3

SWG-2001-00810
22403



**d.p. CONSULTING
ENGINEERS, INC.**

MAY 24 2001

May 22, 2001

Ms. Kim McLaughlin
DEPARTMENT OF THE ARMY
Galveston District Corps of Engineers
P. O. Box 1229
Galveston, Texas 77553-1229

RE: SONNY STEVENSON-ACRLP - OUR JOB NO. 200-235

Dear Ms. McLaughlin:

Enclosed please find Application for Department of the Army Permit and two drawings for proposed fill of 6.40 acres in the 1000 block of West Freeway Boulevard, Vidor, Texas.

Please review same and contact us if you desire additional information.

Sincerely,

William V. Larrain, P.E.

WVL/lr *L.R.*

Enclosures (3)

Complainant's Ex. 46

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

Job 200-235

OMB APPROVAL NO. 0710-0003
Expires June 30, 2000

Public reporting burden for this collection of information is expected to average 10 hours per response, although the majority of application should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED MAY 24 2001	4. DATE APPLICATION COMPLETED
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME ACRLP- HENRY R. "SONNY" STEVENSON	8. AUTHORIZED AGENT'S NAME AND TITLE <i>(an agent is not required)</i> DAVID C. PERRELL, P.E.
6. APPLICANT'S ADDRESS 2085 Galway Vidor, Texas 77662	9. AGENT'S ADDRESS P. O. Drawer 2085 Vidor, Texas 77670
7. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence (409) 769-6088 b. Business (409) 893-2541	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence (409) 962-2599 b. Business (409) 769-0592

11. STATEMENT OF AUTHORIZATION

I hereby authorize, David C. Perrell to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.


APPLICANT'S SIGNATURE

May 3, 2001
DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE *(see instructions)*

Manufactured Home Sales and Service

13. NAME OF WATERBODY, IF KNOWN *(if applicable)*

Tiger Creek

14. PROJECT STREET ADDRESS *(if applicable)*

1000 Block of West Freeway Boulevard

15. LOCATION OF PROJECT

Orange

COUNTY

Texas

STATE

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, *(see instructions)* Property site is located in M. J. Brake Survey (A-35), Orange County, Texas, south of IH-10 600 ft. west from Church Street, Vidor, Texas.

17. DIRECTIONS TO THE SITE From the intersection of IH-10 and Farm Road 105 west on Service Road 2.3 miles to Asher Turn-Around and back east a distance of 0.8 miles to center of IH-10 Frontage. Site is wooded to an area previously cleared and filled under Corps Permit No. 21859.

18. Nature of Activity (Description of project, include all features) Site is to be cleared of trees and vegetation and filled consisting of 6.40 acres. Exclusive of proposed ditch across property, fill is composed of clayey materials hauled to site, spread and compacted.

19. Project Purpose (Describe the reason or purpose of the project, see instructions) The purpose of project is to enable construction of Sales & Service Facilities for Manufactured Homes. The need for this facility has been influenced by proposed construction of major drainage ditch and proposed construction of FM 299 (by pass).

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge Erosion control will be provided for perimeter of fill site with silt fence or hay bales placed to retain/filter possible runoff.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards None.

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions) Site consists of 6.40 acres of wetland divided by Tiger Creek channel (40 bottom, 55' top).

23. Is Any Portion of the Work Already Complete? Yes ___ No X IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (If more than can be entered here, please attach a supplemental list). Beginning at IH-10 going southwest side:

- 1. Kenneth C. Matthews, 1280 Cherokee Lane, Beaumont, Texas 77702.
- 2. Standard Alloys & Mfg., P. O. Box 969, Port Arthur, Texas 77640.

East side ACRLP, 516 ORCHARD STREET, PORT NECHES, TEXAS 77651.

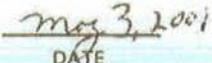
25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
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N O N E.

*Would include but is not restricted to zoning, building and flood plain permits

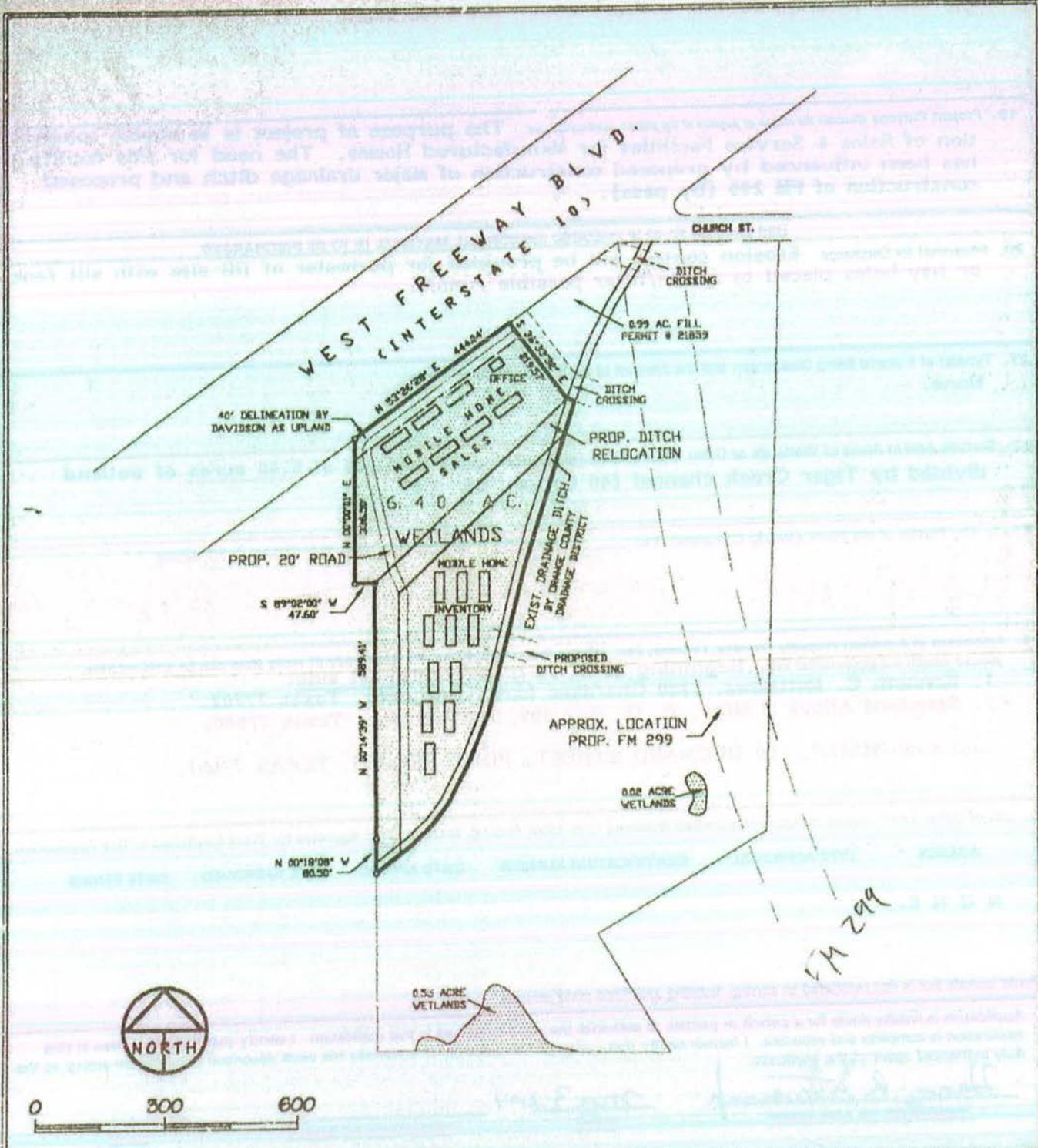
26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT DATE SIGNATURE OF AGENT DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.



SUBJECT SITE PLAN FOR PROPOSED FILL OF 6.40 AC. IN THE 1000 BLOCK OF WEST FREEWAY BOULEVARD - VIDOR, ORANGE COUNTY, TEXAS CLIENT - ACRLP

d.p. No.	200-235
SCALE	AS SHOWN

DRAWN BY	BJB	CHECKED BY	DCP	DATE
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20403
 Henry Stevenson
 13 Aug 01
 Page 2 of 2
 Page 59 of 171



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

November 20, 2001

Evaluation Section

SUBJECT: Withdrawal of Permit Application No. 22403

Henry Stevenson
2085 Galway
Vidor, Texas 77662

Dear Mr. Stevenson:

This letter is in reference to your request for authorization to fill approximately 6.40 acres of wetlands located adjacent to Tiger Creek, at the 1000 Block of West Freeway Boulevard, in Vidor, Orange County, Texas.

In a letter, dated October 12, 2001, we informed you that if we did not receive your response to concerns raised during the public notice comment period within 30 days, your application would be withdrawn. As of the date of this letter, we have not received the information we requested. Therefore, your application for Permit No. 22403 is withdrawn. This withdrawal is without prejudice to your right to reapply at a later date. I am returning your application for your disposition.

If you have questions or require additional information, please contact Kimberly McLaughlin at the letterhead address or by telephone at 409-766-3936.

Sincerely,

BRUCE H. BENNETT
Leader, North Evaluation Unit

for Km
BENNETT
PE-RE

Enclosure

Copy Furnished:
d.p. Consulting Engineers, Inc.
P.O. Drawer 2085
Vidor, Texas 77670

AGENT

"CERTIFIED RETURN
RECEIPT REQUESTED"
7001 0360 0002 7408 7803

Complainant's Ex. 46



REPLY TO
ATTENTION OF

Compliance Section

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

November 13, 2001

SUBJECT: I-4415; Unauthorized Fill, North of the Interstate 10, Tiger Creek Intersection,
Near Vidor, Orange County, Texas

Mr. Henry R. Stevenson, Jr.
2085 Galway
Vidor, Texas 77662

Dear Mr. Stevenson:

This concerns our investigation of the placement of fill material into adjacent wetlands on a site that the Williams Brothers Construction Company, Inc. plans to use for an asphalt plant. The site is located approximately 1.3 miles northwest of the Tiger Creek, Interstate 10 intersection, near Vidor, Orange County, Texas.

Our November 1, 2001, and November 8, 2001, investigations indicate an undetermined acreage of adjacent wetlands were mechanically landcleared and then filled. These wetlands are adjacent to Tiger Creek and the Neches River, which are both waters of the United States. The Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act. The mechanized landclearing of wetlands and the placement of fill material into wetlands was done without a valid Department of the Army Permit and is a violation of Section 404.

The wetlands met the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and are contiguous with Tiger Creek and the Neches River, which are waters of the United States. This approved jurisdictional determination, based on our review of recent maps and aerial photographs and our November 1, and November 8, 2001, site inspections, is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date.

This unauthorized work occurred even though you have previous knowledge of the Clean Water Act through activities located on your properties. A Department of the Army After-the-Fact permit (21790) was issued to you on April 8, 2000, to retain fill placed in wetlands adjacent to Tiger Creek. Also, you have a current Department of the Army permit application (22403) on file with the Corps of Engineers to fill 6.4 acres of wetlands adjacent to Tiger Creek. Furthermore, additional work occurred after you received a verbal notification of this violation during our November 1, 2001, site inspection.

Therefore, I issue this **cease and desist order** to halt any further unauthorized activity in waters of the United States, including adjacent wetlands. If further unauthorized work is performed after the receipt of this order, I must seek immediate legal action to halt such activities.

You are requested to submit a letter of comments explaining why the work was performed without a valid Department of the Army permit. Some of the specific information that we require from you is a statement as to the reason you continued to violate Federal statutes with previous knowledge, when the work started, the name(s), address(es) and telephone number(s) of any contractor(s)/consultant(s), and any additional information that you wish to provide. If we do not receive a written response from you within **30 days** after the receipt of this letter, we will proceed with the appropriate action toward resolution of the matter based on the information in our files. If you have any questions, please reference case number **I-4415** and contact Mr. Andy Williams at the letterhead address or by calling 409-766-3912.

Sincerely,


DAVIDSON
CESWG-PE-RC


CUTLER
CESWG-PE-RC

Casey Cutler
Chief, Compliance Section

Copy Furnished:

Mr. James B. Bressner
Williams Brothers Construction Company, Inc.
3800 Milam
Houston, Texas 77006

"CERTIFIED RETURN
RECEIPT REQUESTED
7001 0360 0002 7408 7827

Mr. Troy Hill
Chief, Marine and Wetlands Section
Environmental Protection Agency
1445 Ross Avenue, 6WQ-EM
Dallas, Texas 75202-2733

CESWG-PE-RC (1145)

16 April 2002

MEMORANDUM FOR THE FILE

SUBJECT: Penalty Assessment for ACR, LP, (ACR) Case I-4415

1. At the request of the Department of Justice, we prepared this penalty assessment for a Section 404 of the Clean Water Act violation against ACR (see enclosures 1 & 2).
2. Project Description: ACR owns and leased property to the Williams Brothers Construction Company, Inc (Williams Bros.). Williams Bros., with the approval and concurrence of ACR filled approximately 6.43 acres of forested wetlands and mechanically landcleared and/or excavated 5.52 acres of forested wetlands. All of the impacted wetlands are adjacent to Tiger Creek and the Neches River. These activities were conducted without a Department of the Army (DA) permit. The project site is located approximately 1.3 miles northwest of the Interstate Highway 10, Tiger Creek intersection, near Vidor, Orange County, Texas.
3. History: On 01 August 2001, Williams Bros. leased an 18.0-acre parcel of land from ACR. This property was leased from ACR to construct a hot mix asphalt plant. Land clearing and the placement of fill material into wetlands occurred after 01 August 2001. Williams Bros. also land cleared and/or excavated two additional tracts of land adjacent to the hot mix asphalt plant site. There was a direct discharge of fill material into approximately 6.43 acres of adjacent bottomland hardwood forested wetlands and 5.52 acres of adjacent bottomland hardwood forested wetlands were mechanically landcleared and/or excavated. According to statements made to the Corps by Williams Bros. personnel, Mr. Sonny Stevenson, a partial owner of ACR informed Williams Bros. representatives that previously a Corp employee indicated that there were no wetlands on the asphalt plant site. Regulatory procedures of the Corps do not provide for verbal jurisdictional determinations and no documentation was provided to the Corps to verify any such statement. No documentation exists in the Galveston District's files indicating that any District personnel ever made any such analysis or statement. This property is a part of a 2,500-acre tract owned by ACR that is comprised of a mosaic of bottomland hardwood wetlands that ACR potentially hopes to develop in the future. Bottomland hardwood forests are among the most high quality ecologically important habitats in Texas. These forests provide a nucleus from which many resident and migrant wildlife species radiate out to adjoining upland sites. In Texas, about 60% of these original floodplain forests have been converted to uplands.

A DA permit was neither applied for nor issued for these unauthorized filling activities. The activities resulted in a violation of Section 404 of the Clean Water Act (CWA). ACR has an extensive knowledge and history with the Corps permit program. Mr. Henry (Sonny) Stevenson, who owns ¼ interest in ACR, was the primary point of contact for ACR on this project along with Williams Bros. During this violation, Mr. Stevenson, was also hired by the Williams Bros. as an equipment operator. At that time, a Corps employee specifically told Mr. Stevenson that the jurisdictional work/filling that he was doing on earthmoving equipment was unauthorized, and suggested that Mr. Stevenson voluntarily stop work. The unauthorized filling activities did not cease. According to statements made to the Corps by Williams Bros. personnel, Mr. Stevenson was also the individual who stated a Corps employee said there were no wetlands on the property. Previously, acting as the agent for ACR, Mr. Stevenson had one confirmed

violation, received one After-The-Fact permit, and one permit amendment for the After-The-Fact permit. He also received an Individual Permit for Section 404 activities and had two previous Section 404 determinations. Finally, Mr. Stevenson applied for an additional Individual Section 404 permit, but the permit application was withdrawn for failure to submit the necessary information.

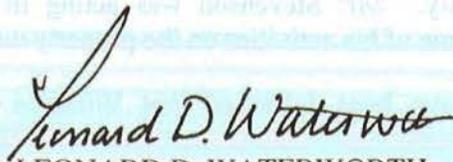
4. EPA Penalty Assessment Calculation: The EPA Final CWA Section 404 Civil Administrative Penalty Settlement Guidance dated 14 December 1990 was used to calculate the "minimum penalty" assessment. These included: the Economic Benefit of Noncompliance; Environmental Significance and Compliance Significance of the violation using the Section 404 penalty matrix; and any suggested relevant adjustment factors (recalcitrance, ability to pay, and litigation considerations). The EPA suggested minimum penalty range is \$15,001 to \$40,000.

Additionally, the settlement team used the EPA's 21 December 2001, Revised CWA Section 404 Settlement Penalty Policy. While the assessment factors remained similar to the 1990 penalty assessment guidelines, the overall weights of the factors considered increased considerably. Under the 2001 assessment, the final suggested "minimum penalty" is \$124,200. The assessment team felt that this was excessive for a "minimum" penalty. Both the 2001 and 1990 penalty assessment guidelines are non-binding guidance that the Corps can use as a tool to calculate fair, equitable, and consistent penalties within the district.

5. Compliance Section Suggested Minimum Penalty: Through numerous actions, ACR has demonstrated knowledge of the Corps permit program. Furthermore, this is ACR's second confirmed violation. The first violation is located within the same general vicinity (I-3901). There is an additional pending case (I-4345) involving ACR that is geographically contiguous with the I-3901 site that is in the final stages of investigation. It is the Corps understanding and belief that one of ACR's owners unsubstantiated and incorrect statements that Corps personnel had stated that there were no wetlands on the site and that it had been "cleared" played a major role in the violation occurring.

Therefore, we considered ACR as a repeat and knowing/flagrant violator. The acreage and the quality of the impacted environment of this violation (I-4415) are significant. Since ACR has the potential to develop/impact approximately 2,500 total acres of similar habitat quality, a clear message needs to be sent. ACR also has the full capability to pay a fine. Closure of the other pending investigation (I-4345) could be included in this penalty assessment. Taking into account all of these factors, the Compliance Section believes a fair and reasonable minimum penalty range amount of \$30,000 - \$35,000 should be assessed to ACR as a penalty and deterrence factor for the two violations.

I concur with the suggested penalty range:


LEONARD D. WATERWORTH
Colonel, EN
Commanding

Vinson & Elkins

ATTORNEYS AT LAW

VINSON & ELKINS L.L.P.
2300 FIRST CITY TOWER
1001 FANNIN STREET
HOUSTON, TEXAS 77002-6760
TELEPHONE (713) 758-2222
FAX (713) 758-2346

Writer's Phone: (713) 758-4598
Writer's Fax: (713) 615-5559

E-mail: smattox@velaw.com
Web: www.velaw.com

December 13, 2001

VIA FACSIMILE (409) 766-6301
AND U.S. MAIL

Mr. Casey Cutler
U. S. Army Corps of Engineers
Galveston District
P. O. Box 1229
Galveston, Texas 77553

Re: I-4415

Dear Mr. Cutler:

This letter is written on behalf of my client, ACR, L.P.. ACR, L.P. is the owner of the land that is the subject of I-4415. While Mr. Henry R. Stevenson, Jr. to whom your November 13, 2001 correspondence was addressed is one of a number of limited partners in ACR, L.P.. The mailing address for the partnership is 516 Orchard Street, Port Neches, Texas 77651. Acreland Investments, Inc. is the general partner of ACR, L.P.

The property at issue was leased by Williams Brothers Construction Co., Inc. (Williams) for a term of 60 months beginning August 1, 2001. By the terms of the lease, Williams is responsible for any permits or approvals, and for compliance with any applicable law related to environmental matters.

ACR, L.P. did not authorize, supervise, perform, or have any involvement with the work involved in the alleged violation. Your letter indicates that Mr. Stevenson was involved in the alleged activity. Mr. Stevenson was acting in his individual capacity as an employee of Williams. None of his activities on the property were as the agent of or on behalf of ACR, L.P.

We have been informed that Williams seeks to resolve this matter by means of Nationwide Permit 26. This seems like a sensible means to resolve these allegations, and we encourage the Corps to allow Williams to resolve these allegations in that manner.

Complainant's Ex. 46

Mr. Casey Cutler
Page 2
December 13, 2001



If you have any questions, please call me at (713) 758-4599.

Very truly yours,

A handwritten signature in black ink that reads "Sharon M. Mattox". The signature is written in a cursive style.

Sharon M. Mattox

736144_1.DOC

"CERTIFIED RETURNED
RECEIPT REQUESTED"
7099 3400 0015 5341 6188

Complainant's Ex. 46

COPY



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO
ATTENTION OF.

November 13, 2001

Compliance Section

SUBJECT: I-4345; Unauthorized Fill, North of the Interstate 10, Tiger Creek Intersection,
Near Vidor, Orange County, Texas

Mr. Henry R. Stevenson, Jr.
2085 Galway
Vidor, Texas 77662

Dear Mr. Stevenson:

This concerns our investigation of the placement of fill material into adjacent wetlands on a site located immediately north of the Interstate 10, Tiger Creek intersection, near Vidor, Orange County, Texas.

Our November 1, 2001, and November 8, 2001, investigations indicate an undetermined acreage of adjacent wetlands were filled. These wetlands are adjacent to Tiger Creek, which is a water of the United States. The Corps of Engineers regulates the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act. The placement of fill material into adjacent wetlands was done without a valid Department of the Army Permit and is a violation of Section 404.

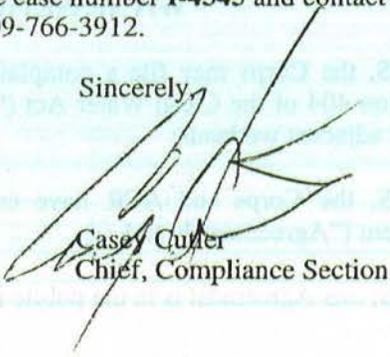
The wetlands met the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual and are contiguous with Tiger Creek, which is a water of the United States. This approved jurisdictional determination, based on our review of recent maps and aerial photographs and our November 1, 2001, and November 8, 2001, site inspections, is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date.

This unauthorized work occurred even though you have previous knowledge of the Clean Water Act through activities located on your properties. A Department of the Army After-the-Fact permit (21790) was issued to you on April 8, 2000, to retain fill placed in wetlands adjacent to Tiger Creek and immediately south of this site. Also, you have a current Department of the Army permit application (22403) on file with the Corps of Engineers to fill 6.4 acres of wetlands adjacent to Tiger Creek, immediately south of Interstate 10. Furthermore, additional work occurred after you received a verbal notification of the violation during our November 1, 2001, site inspection.

Therefore, I issue this **cease and desist order** to halt any further unauthorized activity in waters of the United States, including adjacent wetlands. If further unauthorized work is performed after the receipt of this order, I must seek immediate legal action to halt such activities.

You are requested to submit a letter of comments explaining what was the purpose of the work and why the work was performed without a valid Department of the Army permit. Some of the specific information that we require from you is a statement as to the reason you continued to violate Federal statutes with previous knowledge, when the work was started, the name(s), address(es) and telephone number(s) of any contractor(s)/consultant(s) involved in the work, and any additional information that you wish to provide. If we do not receive a written response from you within **30 days** after the receipt of this letter, we will proceed with the appropriate action toward resolution of the matter based on the information in our files. If you have any questions, please reference case number **I-4345** and contact Mr. Andy Williams at the letterhead address or by calling 409-766-3912.

Sincerely,



Casey Cutler
Chief, Compliance Section

Copy Furnished:

Mr. Troy Hill
Chief, Marine and Wetlands Section
Environmental Protection Agency
1445 Ross Avenue, 6WQ-EM
Dallas, Texas 75202-2733

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND ACR, L. P.**

THIS AGREEMENT entered into between the United States of America, through the United States Attorney for the Eastern District of Texas on behalf of the U.S. Army Corps of Engineers Galveston District, (the "Corps"), and ACR, L.P. ("ACR"). This Agreement shall become effective upon execution by the final signatory, the Assistant United States Attorney on behalf of the United States.

WITNESSETH THAT:

WHEREAS, the Corps may file a complaint and/or complaints against ACR alleging violations of Section 404 of the Clean Water Act ("CWA"), 33 U.S.C. §1344, for unauthorized filling of non-tidal adjacent wetlands;

WHEREAS, the Corps and ACR have consented to the making and entry of this settlement agreement ("Agreement"); and

WHEREAS, this Agreement is in the public interest.

NOW, THEREFORE, the parties agree as follows:

CLAIMS

1. On December 27, 1999, Mr. David Perrell of dp Consulting Engineers submitted an After-the-Fact permit application for property owned by ACR on behalf of Mr. Henry R. Stevenson, Jr., agent and part owner of ACR. The property is located at the Bonner turnaround, 1200 West Freeway, near Vidor, Orange County, Texas. Subsequently, on April 10, 2000, Department of the Army Permit No. 21790 was issued. This permit authorized the retention of fill placed in 1.58 acres of wetlands to construct a mobile home retail sales facility. On November 14, 2000, Mr. Stevenson requested a modification of Permit No. 21790 to modify the original mitigation plan. On February 20, 2001, Department of the Army Permit No. 21790(01) was issued.

2. Following issuance of Department of the Army Permit No. 21790(01), Mr. Henry R. Stevenson, Jr., acting on behalf of ACR allegedly placed fill into approximately 1.21 acres of wetlands adjacent to Tiger Creek, immediately north of the fill authorized by Department of the Army After-the-Fact Permit No. 21790(01).

3. The Corps has determined that ACR failed to obtain a Department of the Army permit prior to the placement of fill into approximately 1.21 acres of wetlands adjacent to Tiger Creek in violation of Section 404 of the CWA, 33 U.S.C. §1344, which prohibits the placing of dredged or fill material in waters of the United States without a Department of the Army permit.

GENERAL PROVISIONS

4. The provisions of this Agreement shall apply to and be binding upon the parties, their officers, agents, employees, successors, heirs, and assigns and any person, firm, corporation, or government entity acting in concert or participation with the parties. ACR shall give notice of this Agreement to any successors in interest prior to transfer of ownership of the property or of any part of the property that is the subject of this Agreement.
5. This Agreement shall constitute a full and final settlement of all claims that are or might have been brought based on or arising from the Corps' allegations contained in Paragraphs 1-3 of this Agreement or arising out of Galveston District Case I-4345; provided that both parties abide by the terms and conditions herein. Further, the United States acknowledges that the civil penalty set forth in Paragraph 15 of this Agreement shall constitute the full civil penalty that ACR shall be required to pay to address alleged violations of Section 404 of the CWA arising out of Galveston District Case I-4345 and Galveston District Case I-4415, which the parties contemplate will be the subject of a separate settlement agreement. The United States does not waive any other rights or remedies available to it for any claims or any violations by ACR of other federal laws, regulations, or permit conditions.
6. This Agreement in no way affects or relieves ACR of the responsibility to comply with any other federal laws that may apply in addition to Section 404 of the CWA or with any state or local law, regulation, or permit condition. ACR shall not alter or modify any water of the United States, except in accordance with permits from the Secretary of the Army and any appropriate agency.
7. ACR shall be responsible for any and all expenses of any nature whatsoever incurred by the United States in collecting any outstanding penalties due under Paragraph 15 of this Agreement, including, but not limited to attorney's fees. The United States reserves all legal and equitable remedies available to enforce the provisions of this Agreement.
8. Any modification of this Agreement shall be in writing and shall not take effect unless signed by both the Corps and ACR.
9. The sole purpose of this Agreement is to resolve any actual or potential dispute between ACR and the Corps. ACR does not admit to any of the allegations made by the Corps.

SPECIFIC PROVISIONS

10. ACR agrees to submit a Department of the Army permit application for Nationwide Permit 32 to the Corps for the alleged unauthorized fill located at the Bonner turnaround, 1200 West Freeway, near Vidor, Orange County, Texas. The application will be submitted within fifteen (15) days of the effective date of this Agreement.

Complainant's Ex. 46

11. ACR agrees to purchase five (5) credits from Wetlands Mitigation Replacement of Southeast Texas, LTD within thirty (30) days of the effective date of this Agreement. ACR will submit documentation to the Corps verifying the number of credits that were purchased. The Corps must receive this documentation within forty-five (45) days of the effective date of this Agreement.

12. ACR shall not be required to perform any restoration work to address the alleged discharges of unauthorized fill material or construction of allegedly unauthorized roads as more particularly described in Paragraphs 1-3 of this Agreement and Galveston District Case I-4345.

NOTICE

13. All notices, reports, and submissions to the Corps required by this Agreement shall be in writing and shall be sent to:

Michael Lockhart
Assistant United States Attorney
350 Magnolia, Suite 350
Beaumont, TX 77701

All notices, reports, and submissions to ACR required by this Agreement shall be in writing and shall be sent to:

Thomas Gildersleeve
Vinson & Elkins L.L.P
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760

CIVIL PENALTY

14. ACR shall pay a civil penalty of twenty thousand dollars (\$20,000) pursuant to Section 404 of the CWA, 33 U.S.C. §1344, to address the alleged violations of the CWA. ACR, within 10 days of execution of this agreement, will be provided instructions for wire transfer of the penalty, and within 10 days of receipt of said instructions, ACR will transfer the funds to the account as designated in the instructions from the U.S. Attorney.

SAFEGUARDS

15. The parties agree that this Agreement is in their best interests and that its terms are reasonable under the circumstances.

FOR THE UNITED STATES OF AMERICA:

Michael Lockhart
Michael Lockhart
Assistant United States Attorney
Eastern District of Texas
Beaumont, Texas

DATE: 10/13/04

FOR ACR, LP:

Andrew W. Dunn

Acreland Investment, Inc., its General Partner
By: Andrew W. Dunn
President, Acreland Investment, Inc.

DATE: 10/5/04

ACRfinal9-24-04Southviolation

WETLANDS MITIGATION REPLACEMENT
OF
SOUTHEAST TEXAS, LTD

P.O. Box 5074
Beaumont, Texas 77726
409-755-3180

AGREEMENT

WHEREAS, ACR, LP whose address is 516 Orchard, Port Neches, Texas 77651 applied for Permit No. I - 4345 to impact 1.21 of an acre of wetlands in Orange County, Texas. The purpose of this permit is to allow ARC. LP to fill 1.21 acres of wetlands.

WHEREAS, the Corps of Engineers has approved the use of Mitigation Credits from the Neches River Cypress Swamp Preserve Mitigation Bank. The Corps of Engineers has required that 5 credits from said Mitigation Bank shall be set aside to offset the lost of the above referenced 1.21 acres.

WHEREAS, Wetlands Mitigation Replacement of Southeast Texas, LTD. whose address is P.O. Box 5074, Beaumont, Texas 77726. is the owner and operator of the Neches River Cypress Swamp Preserve Mitigation Bank and there are 107 credits available in the Mitigation Bank at this time.

NOW THEREFORE, ACR, LP for and in the consideration of One Hundred Dollars (\$100.00) and other valuable considerations in hand paid to Wetlands Mitigation Replacement of Southeast Texas, Ltd. does hereby assign, transfer and convey unto the Wetlands Mitigation Replacement of Southeast Texas, Ltd. all of the **MITIGATION REQUIREMENTS** associated with and required by Permit No. I - 4345. Wetlands Mitigation Replacement of Southeast Texas, Ltd. does hereby accept the assignment, transference and conveyance of the **MITIGATION REQUIREMENTS** associated with and required by Permit No. I - 4345 and by this agreement does hereby set aside 5 credits from its Mitigation Bank as required by said permit.

Wetlands Mitigation Replacement of Southeast Texas, Ltd. does hereby accept any and all liability associated with the **MITIGATION REQUIREMENTS** of said permit and does hereby agree to indemnify and hold harmless ACR, LP of and from any mitigation requirements associated with Permit No. I - 4345 now and in the future.

All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.

Complainant's Ex. 46

This agreement may be signed in any number of counterparts, each of which shall be binding upon all parties who execute same.

EXECUTED this 1st day of November, 2004.

ACR, LP.

By: Henry R. Stevenson, Jr.
HENRY R. STEVENSON, JR.

WETLANDS MITIGATION REPLACEMENT
OF SOUTHEAST TEXAS, LTD.

By: Edwin Arnaud, III
Edwin Arnaud, III, General Partner
Wetlands Mitigation Replacement
Of Southeast Texas, Ltd.

STATE OF TEXAS
COUNTY OF ORANGE

This instrument was acknowledged before me this 1st day of November, 2004 by
HENRY R. STEVENSON, JR. TREASURER ACR, LP



Deborah Turner
Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF JEFFERSON

This instrument was acknowledged before me this 1st day of November, 2004, by Edwin Arnaud, III, General Partner of Wetlands Mitigation Replacement of Southeast Texas, Ltd.



Deborah Turner
Notary Public, State of Texas

Complainant's Ex. 46

AEW
WILLIAMS/jw/3912
CESWG-PE-RC



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

January 6, 2005

Compliance Section

SUBJECT: Case I- 4345; ACR, LP, Unauthorized Placement of Fill in Jurisdictional Wetlands,
Bonner Turnaround, 1200 West Freeway, Near Vidor, Orange County, Texas

Mr. Thomas Gildersleeve
Vinson & Elkins, L.L.P.
2300 First City Tower
1001 Fannin Street
Houston, Texas 77002-6760

Dear Mr. Gildersleeve:

This letter is in reference to the unauthorized placement of fill material into 1.21-acre of wetlands adjacent to Tiger Creek, a water of the United States, for the purpose of constructing a private road. The unauthorized fill is located immediately north of the Bonner Turnaround at 1200 West Freeway, near Vidor, Orange County, Texas.

We have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the aforementioned unauthorized discharge in waters of the United States, including the fact that ACR, LP has purchased five (5) credits from the Wetlands Mitigation Replacement of Southeast Texas, LTD, as compensation for the unauthorized impacts. Given that the requirements of the signed Settlement Agreement have been successfully completed, these impacts are authorized by Nationwide Permit (NWP) 32. NWP 32 authorizes the retention of unauthorized fills and/or structures for completed enforcement actions, provided that minimal impacts have occurred and they are adequately compensated. As such, we have closed this enforcement action accordingly.

If you have any questions concerning this matter, please contact Mr. Andy Williams at the letterhead address or by calling 409-766-3912. Please reference File Number **I-4345** in your correspondence.

Sincerely,

Andrew Williams
Acting South Unit Leader

AEW
WILLIAMS
CESWG-PE-RC
Page 75 of 171

CESWG-PE-RC (1145)

17 October 2003

MEMORANDUM FOR THE FILE

SUBJECT: D-14242; Wetland Delineation Verification, ACR, LP, Approximate 33 Acre Tract, Immediately South of the Interstate Highway 10-Tiger Creek Intersection, Orange County, Texas.

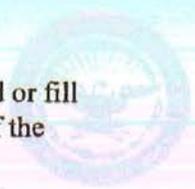
1. Mr. James White, Natural Resource Manager, of Northrup Associates, Inc., on behalf of ACR, LP, requested by letter dated 19 December 2002, a wetland delineation verification, for an approximate 33 acre tract. The tract is located immediately south of the Interstate Highway 10-Tiger Creek Intersection, near Vidor in Orange County, Texas.
2. A desk review was conducted prior to a 12 March 2003 site inspection. Several items were sent from Mr. White and were reviewed. They were: 1) Wetland Delineation Report that included a site map, and three data sheet. 2) A color infrared image received on 08 January 2003. 3) Additional routine wetland determination data sheets and a wetland delineation map that was received on 25 February 2003. Other items reviewed included: Beaumont East topographic map (1960; photo-revised 1970 and 1974), 1995 DOQQ (Beaumont East NE), with a FEMA Q3 data, the Beaumont East NWI (based on 1993 photographs) and Orange County soil data overlay. The DOQQ indicated wet signatures on the site; the NWI showed palustrine forested wetlands on the west side of the property and the FEMA Q3 indicated the western portion of the site was within the 100-year flood zone.
3. A site inspection was conducted on 12 March 2003. Several observations were made. They were:
 - A ditch contiguous with Tiger Creek, on the north side of the property extended the ordinary high water mark (OHWM) of the creek and needed to be included as a jurisdictional water of the U.S.
 - There was an approximate 2-foot fringe wetland along the entire left descending bank of Tiger Creek (1639.74 feet) and along the right descending bank from the northern boundary southward for 381 feet. These fringe wetlands, dominated by polygonum species, needed to be delineated.
 - Area 2, which was mapped as an upland, met the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual. Therefore, I requested that they correct the delineation map to show Area 2 as a wetland.
 - The upland/wetland boundary of Area 7 was modified slightly and I requested they show this modification on the final delineation map.
 - The borrow pit was examined and no vegetation was observed within the pit. Based on observations, the pit was excavated from uplands. Also, based on information provided by Mr. White, the borrow pit was utilized as a fill source for the fill permitted by DA

permit 21859 and placed on the northern portion of the site. Also, Mr. John Davidson had conducted a delineation of the site in June of 1999 (D-10400). The wetland in this area was delineated and shown on a drawing as 0.55 acres, but was never stamped by a RPLS. The current survey shows the wetland as 0.485 acres. A violation of Section 404 could not be confirmed at this location. The berm along the northern portion appeared to be located completely within an upland area based on observation of the land contiguous to it. Also, elevation data on the current survey shows the elevation of the borrow pit as higher than Tiger Creek. As a result, the borrow pit does not extend the OHWM of Tiger Creek and does not meet the definition of a wetland (it did not have any vegetation in it during the site visit). I conclude that it was excavated from uplands, and as it has not been abandoned for more than five years, it is still active and cannot be claimed as a Section 404 water.

- A small wetland was observed on the eastern portion of the site, but was determined to be outside of the 100-year flood zone with no surface hydrological connection to Tiger Creek or any other water of the U.S.
- A watercourse was observed running westward across the north portion of the site. It was determined to be an erosion feature that formed over the last few years, possibly after the site was cleared. This watercourse is shown as a non-jurisdictional drainage swale. This determination was based on several factors. The factors were:
 - 1) Some of the substrate was old wood chips.
 - 2) The watercourse is not indicated by a blue line on the topographic map.
 - 3) The soil survey does not show a distinct soil type for the channel.
 - 4) The beginning of the swale started at the property line.

3. On 30 July 2003, The Galveston District received the final delineation map for this project. It showed all the corrections based on the above observation. The acreage of fringe wetlands was not shown on the map; however, Mr. James White faxed a table on 17 October 2003, showing the acreage of all the wetlands including the fringe wetlands. I also made a note on a copy of the survey to show the fringe wetland as well. The table faxed by Mr. White also showed the borrow area as jurisdictional, but it is not jurisdictional based on the above discussion. Finally, the Table faxed by Mr. White indicates Tiger Creek is a Section 10 water. However, it is not on the navigable water list and did not appear to be subject to the daily tide. As a result, it is only subject to Section 404 of the Clean Water Act. **The final delineation map, dated 28 July 2003, shows a total of 6.92 acres of wetlands adjacent to Tiger Creek and 1.35 acres of Tiger Creek (open water) within the project limits. I concur that the acreage shown is an adequate representation of the wetlands and waters located on the site.** All the wetlands met the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual. The wetlands listed as jurisdictional are all adjacent to Tiger Creek. They are adjacent because they are located within the 100-year floodplain of Tiger Creek and there are no obvious barriers between them and Tiger Creek. Additionally, the fringe wetlands are contiguous with Tiger Creek. Tiger Creek is a tributary of the Neches River, a navigable water of the United States. As a result, the discharge of dredged or fill material into these wetlands and waters shown on the delineation map are subject to Section 404 of the Clean

Water Act and a Department of the Army permit is required prior to discharging dredged or fill material. This approved jurisdictional determination is valid for 5 years from the date of the notifying letter unless new information warrants a revision prior to the expiration date.



Andrew Williams
Andrew Williams
Project Manager

Mr. James White
Natural Resource Manager
Northrup Associates, Inc.
4338 Westview Drive, Suite 101
Houston, Texas 77055

James White

[The following text is mirrored and appears to be bleed-through from the reverse side of the page. It is largely illegible due to the low resolution and bleed-through.]



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

October 21, 2003

Compliance Section

SUBJECT: D-14242; Wetland Delineation Verification, ACR, LP, Approximate 33-Acre Tract, Immediately South of the Interstate Highway 10-Tiger Creek Intersection, Orange County, Texas

Mr. James White
Natural Resource Manager
Northrup Associates, Inc.
9328 Westview Drive, Suite 100
Houston, Texas 77055

Dear Mr. White:

This concerns your request for a jurisdictional delineation verification for an approximate 33-acre tract. The tract is located immediately south of the Interstate Highway 10-Tiger Creek Intersection, near Vidor, in Orange County, Texas.

Based on a desk review of the information you submitted, recent maps, aerial photographs and our March 12, 2003 site inspection, we concur that 8.27 acres of waters of the United States are located within the boundaries of the property, as indicated on the final jurisdictional delineation map, dated July 28, 2003. Specifically, the site has 6.92 acres of wetlands adjacent to Tiger Creek and 1.35 acres of Tiger Creek (open water) within the project limits. The wetlands met the hydrophytic vegetation, wetland hydrology, and hydric soil criteria of the 1987 Corps of Engineers Wetland Delineation Manual. These wetlands are located within the 100-year floodplain of Tiger Creek and/or are contiguous with Tiger Creek and therefore are adjacent to Tiger Creek. Tiger Creek is a tributary to the Neches River, a navigable water of the United States. As a result, the discharge of dredged or fill material into Tiger Creek and the adjacent wetlands is subject to Section 404 of the Clean Water Act and a Department of the Army permit is required. However, the 0.59 acre borrow pit is not jurisdictional. It was constructed from uplands and does not extend the ordinary high water mark of Tiger Creek. Also, it does not meet the definition of a wetland, as described above.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

-2-

This approved jurisdictional determination is valid for 5 years from the date of this letter unless new information warrants a revision prior to the expiration date. Please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations. If you have any questions concerning this matter, please reference file number **D-14242** and contact Mr. Andy Williams at the letterhead address or by telephone at 409-766-3912.

Sincerely,

John Davidson
South Unit Leader

JD
AEW
DAVIDSON
CESWG-PE-RC

Enclosure

Complainant's Ex. 46

This approved Institutional Investment is valid for 3 years from the date of this letter. New information warrants a review prior to the expiration date. Please see the enclosed sheet regarding the administrative appeal process for Institutional Investments. If you have any questions concerning this matter, please advise the number 1-800-455-5272 and contact Mr. John Williams at the Investment Office or by telephone at 408-735-5272.

Sincerely,

John Davidson
Investment Officer


John Davidson
Investment Officer

Enclosure

DEC 29 2003



NORTHROP ASSOCIATES, INC.
LAND PLANNING • ENVIRONMENTAL • REAL ESTATE CONSULTANTS

December 24, 2003

DELIVERY BY MESSENGER

Mr. Bruce Bennett
Unit Leader, North Evaluation Unit
U.S. Army Corps of Engineers, Galveston District
2000 Fort Point Road
Galveston, Texas 77550

Re: Individual Permit Application for ACR-LP
Proposed Wetland Impacts
Vidor, Orange County, Texas

Dear Mr. Bennett:

Northrup Associates, Inc. (NAI) is pleased to submit an Individual Permit Application in the name of ACR-LP. This permit application is for proposed wetland impacts to a ± 33-acre tract located within Vidor, Orange County, Texas.

Sincerely,

NORTHROP ASSOCIATES, INC

James G. White
Natural Resource Manager

Enclosures

JW:jw

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

DEC 29 2003

OMB APPROVAL NO. 0710-003
Expires October 1996

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1216 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

ITEMS 1 THRU 4 TO BE FILLED IN BY THE CORPS

1. APPLICATION NO. 23287	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
------------------------------------	----------------------	------------------	-------------------------------

ITEMS BELOW TO BE FILLED IN BY APPLICANT

5. APPLICANT'S NAME ACR-LP		8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) Northrup Associates, Inc. Mr. James G. White, Environmental Specialist	
6. APPLICANT'S ADDRESS 510 Orchard Port Neches, TX 77651		9. AGENT'S ADDRESS 9328 Westview Drive, Suite 100 Houston, Texas 77055	
7. APPLICANT'S PHONE NOS. W/AREA CODE		10. AGENT'S PHONE NOS. W/AREA CODE	
a. Residence N/A	b. Business (409) 745-1115	a. Residence N/A	b. Business (713) 461-3485 (713) 463-5039 (facsimile)

11. STATEMENT OF AUTHORIZATION

I hereby authorize, Northrup Associates, Inc. to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

[Signature] President of Acreland Investments, Inc. 12/22/03
 APPLICANT'S SIGNATURE BP for ACR, L.P. DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) ACR-LP 33-acre Anchor Retail Development
--

13. NAME OF WATERBODY, IF KNOWN (if applicable) Tiger Creek	14. PROJECT STREET ADDRESS (if applicable) Interstate 10 East Vidor, Texas
15. LOCATION OF PROJECT Orange COUNTY Texas STATE	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)
Site lies between Matthews Trucking on the west and Church Street on the east.

17. DIRECTIONS TO THE SITE
From the intersection of US 195 (Main Street) and IH-10 East in Vidor, Texas, proceed west on IH-10 west approximately 3.4 miles, exit 856R, turn south under IH-10 and proceed approximately 0.2 mile east on eastbound IH-10 frontage road. Site is located on the right at the intersection of Church Street, IH-10 East and Tiger Creek.

Complainant's Ex. 46

18. Nature of Activity (Description of project) include all features.
 Realign Tiger Creek and place fill material into wetlands for construction of anchor retail site. Wetlands will be constructed on-site to compensate for 84% of wetland impacts. The realigned channel will be approximately 0.27 acre larger than the existing channelized creek, creating a 20% increase in the creek's wetland value.

19. Project Purpose (Describe the reason or purpose of the project, see instructions)
 Lying at a strategic location, development of the property as a retail anchor will provide employment for the local labor force, tax revenue for local and state entities, and a more localized and accessible source for consumer goods.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED.

20. Reason(s) for Discharge

Fill material will be discharged into waters of the U.S., including wetlands to enable the realignment of Tiger Creek and development of the site into an anchor retail facility to serve the surrounding communities.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

Dredged and fill soils and rip-rap. An accurate amount of cubic yards cannot be determined due to the depth of Tiger Creek and required ground elevations for construction of retail structures being unknown at this time.

22. Surface Area in Acres of Wetlands or other Waters Filled (see instructions)

The realignment of Tiger Creek, Section 404 open water, requires filling 1.35 acres and excavating 1.62 acres. Approximately 6.84 acres of Section 404 wetlands will be filled with 1.43 acres being preserved and 4.36 acres being mitigated for on-site resulting in a net fill amount of 0.86 acres.

23. Is Any Portion of the Work Already Complete? Yes _____ No IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessors, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

See attached list.

25. List of Other Certifications or Approvals/Denials Received from other Federal, State or Local Agencies for Work Described in this Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATED DENIED
NONE					

*Would include but is not restricted to zoning, building and flood plain permits.

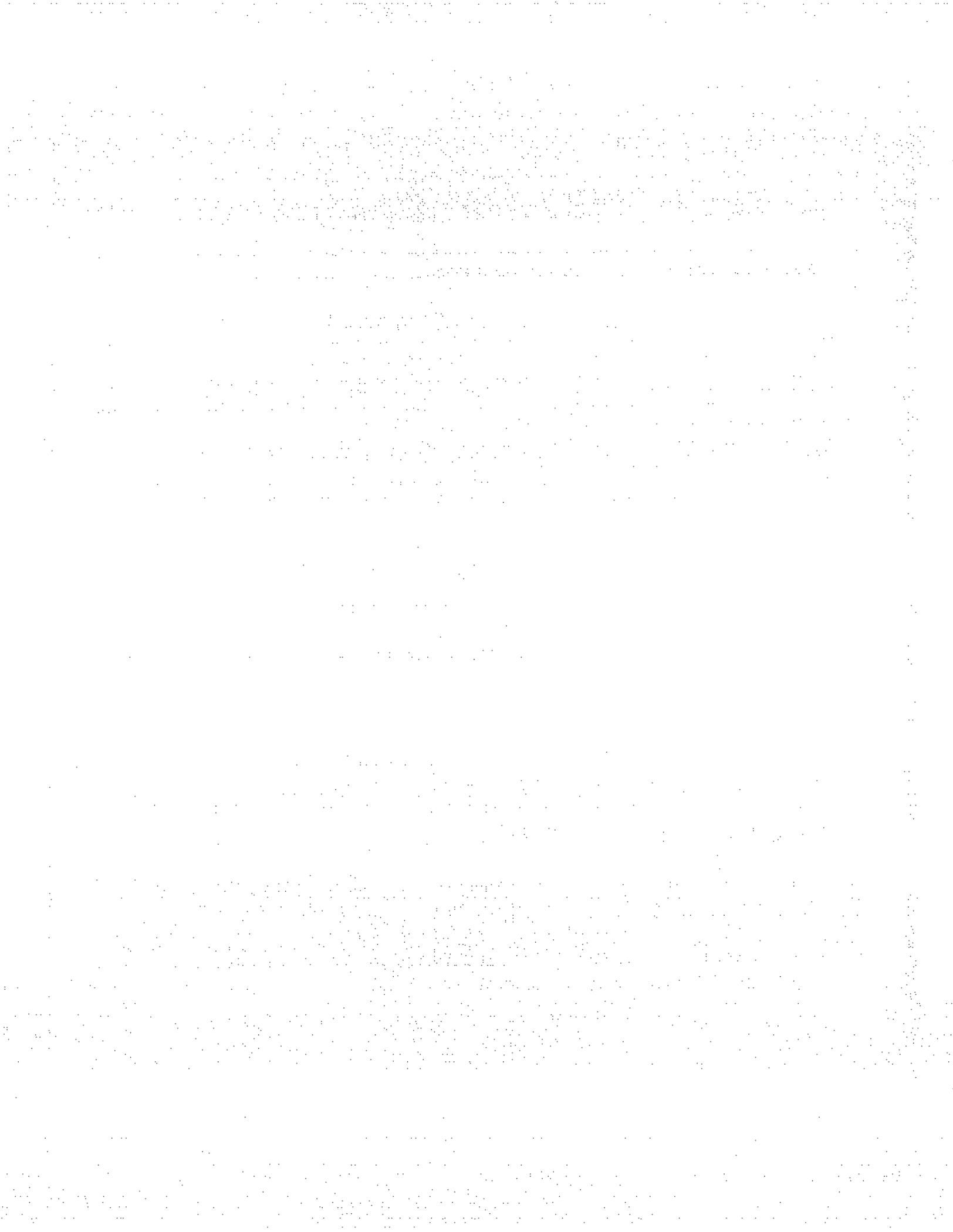
26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

x <i>[Signature]</i> SIGNATURE OF APPLICANT Anelove Investments Inc, SP for ACC.A.P.	12/27/03 DATE	_____ SIGNATURE OF AGENT	_____ DATE
--	------------------	-----------------------------	---------------

This application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

U.S. GPO: 2001-550-436/2-018



DEPARTMENT OF THE ARMY PERMIT

Permittee ACR-LP

Permit No. 22287

Issuing Office Galveston District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To discharge fill into 5.49 acres of jurisdictional wetlands and 1.35 acres of Tiger Creek for the construction of a retail facility. The project includes rerouting a portion of Tiger Creek within the project area. The realigned Tiger Creek would be channeled through a 1.62-acre constructed channel on the west side of the project area. The permittee will avoid 1.43 acres of wetlands on-site and construct 5.31 acres of wetlands on-site for water quality improvement. In addition, permittee will purchase 28 credits at the Neches River Cypress Swamp Preserve Mitigation Bank (NRCSPMB) to offset habitat losses. The project will be conducted in accordance with the attached plans, in 6 sheets, and the mitigation plan in 15 sheets.

Project Location: On Tiger Creek and adjacent wetlands, on a 33-acre site, south of Interstate Highway 10, southwest of Church Street, in Vidor, Orange County, Texas.

Rec'd
MAY 20 2010
\$100.00
[Signature]

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2010. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

Complainant's Ex. 46

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. All construction of mitigation, including planting, must be complete within 12 months after start of construction within jurisdictional areas. The permittee will notify the Corps of Engineers (CE), Chief of Compliance, Galveston District, Regulatory Branch, in writing when the work begins in jurisdictional areas. Monitoring and maintenance will proceed according to the mitigation plan.
2. The mitigation success criteria, as indicated in the mitigation plan must be achieved for the mitigation requirement to be considered complete.
3. Should mitigation be determined to be unsuccessful by CE personnel at the end of the monitoring period, the permittee will be required to take necessary corrective measures, as approved by the CE. Once the corrective measures are completed, the permittee will notify the CE and a determination will be made regarding success of the mitigation.
4. The permittee shall purchase 28 credits from the NRCSPMB mitigation bank prior to the start of construction in the jurisdictional area.
5. The permittee will submit documentation to the CE, Chief of Compliance, Galveston District, Regulatory Branch, verifying that 28 credits were purchased from NRCSPMB prior to the start of construction in jurisdictional areas.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.

- c. Damage claims associated with any future modification, suspension, or revocation of this permit
- 4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
- 5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

John J. White (Agent)
 (PERMITTEE)
 ACR-LP

26 Aug 05
 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Bruce H. Bennett
 (DISTRICT ENGINEER)
 BRUCE H. BENNETT, LEADER
 NORTH EVALUATION UNIT
 FOR COLONEL STEVEN P. HAUSTEIN

26 Aug 05
 (DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

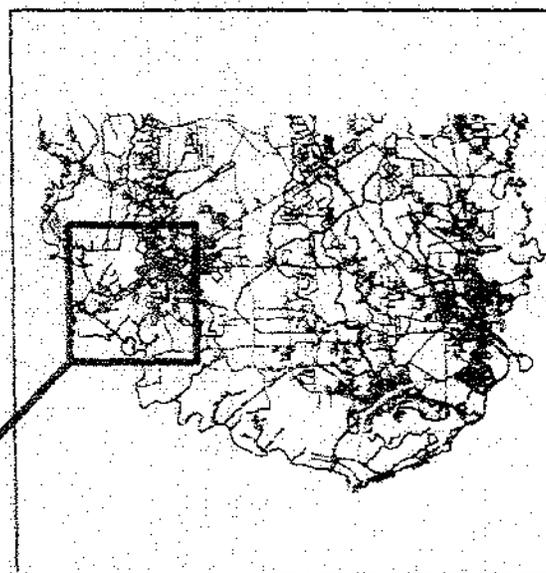
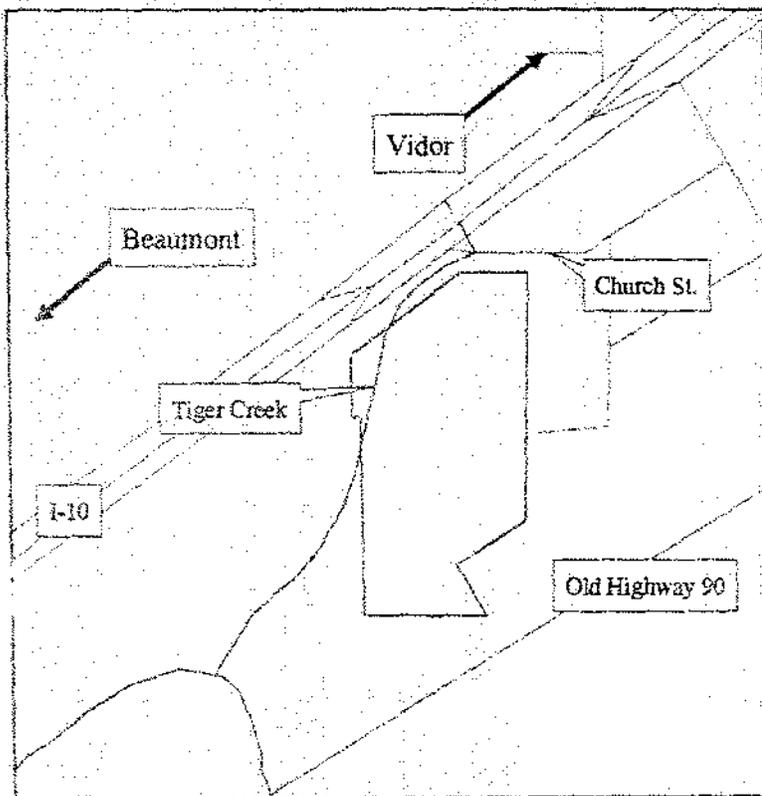
 (TRANSFEEE)

 (DATE)



33-Acre Commercial Tract Vidor, Orange County, Texas

Exhibit 1 Vicinity Map



ORANGE COUNTY

Source: Geography Network
TIGER Census Data
UTM Zone 15
NAD 83 GRS 80
Date: 06/06/03

PERMITTED PLANS

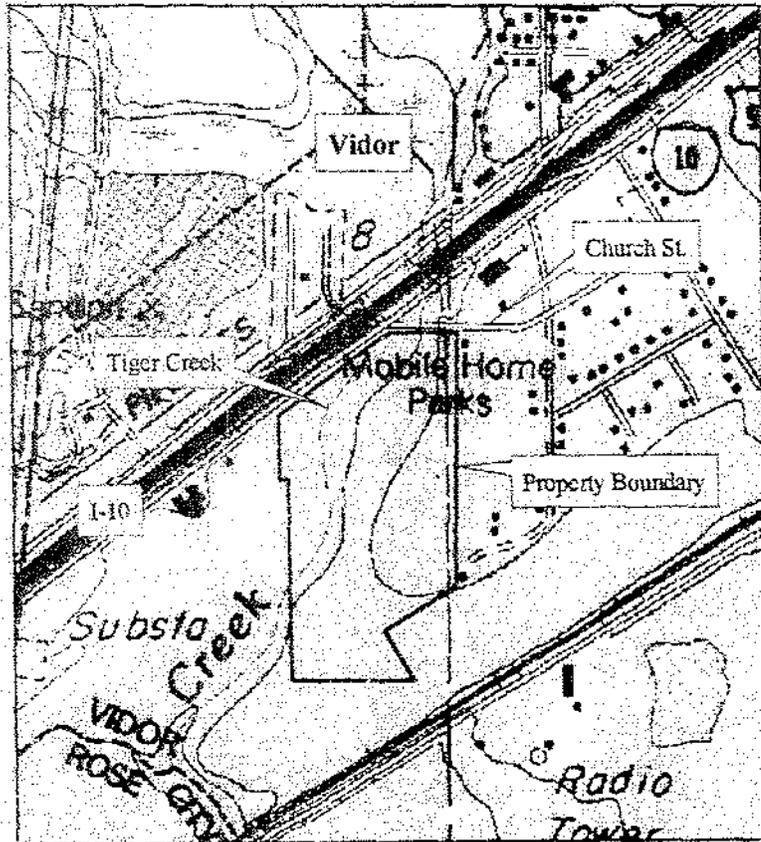
NORTHROP ASSOCIATES, INC.
LAND PLANNING • ENVIRONMENTAL • PUBLIC UTILITY CONSULTANTS
1022 WESTVIEW DRIVE, SUITE 100 713.961.3420
HOUSTON, TEXAS 77060 Fax: 713.483.5029

Complainant's EX 46

DEC 29 2003

33-Acre Commercial Tract Vidor, Orange County, Texas

Exhibit 4 USGS Map



Source: United States
Geological Survey
7.5min Grid: Beaumont East
UTM Zone 15
NAD 83 GRS 80
Date: 07/28/03

APPROVED PLANS

NORTHROP ASSOCIATES, INC.
LAND PLANNING / ENVIRONMENTAL / REAL ESTATE CONSULTANTS
8020 WESTVIEW DRIVE, SUITE 100 HOUSTON, TEXAS 77055
713-461-5480 Fax: 713-461-5209

Complainant's Ex 46

DEC 29 2003

DEC 9 9 2013

Map Name: 080118 990 Pkg. 704
Plot Date: 07/08/99 At 1:00
M.J. Brake Survey
P. R. No. 501
Block, Town, Range
T24 N R20 E S26
Twp 24N, R20E, S26E
Twp 24N, R20E, S26E

M.J. Brake Survey
Abstract 35

Interstate Highway No. 10
(800 R.O.W.)

A-148

Church Street

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Highland Addition
Called 50 Acres
Vol. 1, Page 7 N.R.O.C.T.

33,569 Acres

(Called 33.18 Acres)
From Peley Carroll, Bowman Suggs, et al
To A.C.L. I.P.
(Vol. 1126, Page 924) B.R.O.C.T.

A. Pumbrey Survey
Abstract 148

Wm. Chisolm Survey
Abstract 37

Survey Plat Showing A
23,869 Acre Tract
Being All of A

Called 3119 Acre Tract
Volume 1123, Page 983
Used Rec'd of George (1893, 1894)

Called 1.25 Acre Tract
Volume 1160, Page 993
Used Rec'd of George (1893, 1894)

M.J. Brake Survey
Abstract 35
Orange County, Texas
July 20, 2003 8822/308

Elevation Notes Herein are based on
an assumed relative elevation and not
to be considered as level elevations

112.140	112.141	112.142	112.143	112.144
112.145	112.146	112.147	112.148	112.149
112.150	112.151	112.152	112.153	112.154
112.155	112.156	112.157	112.158	112.159
112.160	112.161	112.162	112.163	112.164

NOTICE: THE INFORMATION CONTAINED HEREIN IS BASED UPON THE FIELD
PLANS AND SURVEY DATA. THE SURVEYOR HAS CONDUCTED A VISUAL
CHECK OF THE DATA AND HAS FOUND IT TO BE CORRECT. THE SURVEYOR
HAS NOT CONDUCTED A MEASUREMENT OF THE DISTANCE BETWEEN
THE M.J. BRAKE SURVEY, ABSTRACT 35, AND THE CHISOLM SURVEY,
ABSTRACT 37. THE SURVEYOR HAS CONDUCTED A VISUAL CHECK OF
THE DISTANCE BETWEEN THE M.J. BRAKE SURVEY, ABSTRACT 35,
AND THE CHISOLM SURVEY, ABSTRACT 37. THE SURVEYOR HAS
CONDUCTED A VISUAL CHECK OF THE DISTANCE BETWEEN THE M.J. BRAKE
SURVEY, ABSTRACT 35, AND THE CHISOLM SURVEY, ABSTRACT 37.

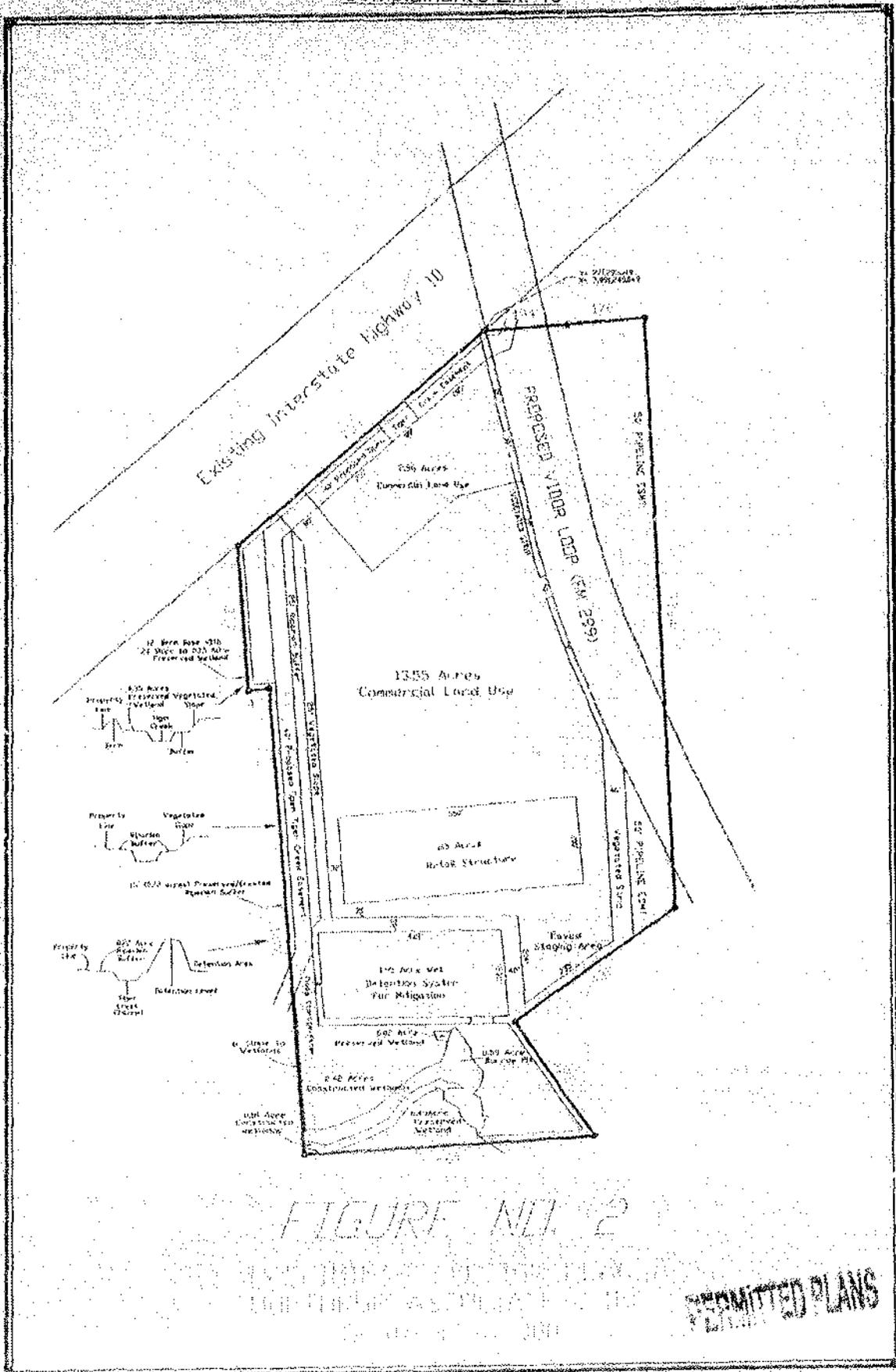


FIGURE NO. 2

PERMITTED PLANS

July 6 2004 - 0155

2004-10-15

JUL 07 2004



NORTHROP ASSOCIATES, INC.
LAND PLANNING • ENVIRONMENTAL • REAL ESTATE CONSULTANTS

July 1, 2004

Mr. Kenny Jaynes
North Compliance Section Unit Leader
U.S. Army Corps of Engineers
2000 Fort Point Road
Galveston, TX 77550

Re. Verification of a Wetland Delineation on an approximately
74-Acre Tract Located North of
Rose City, Orange County, Texas

Dear Mr. Jaynes:

On behalf of ACR-LP, Northrup Associates, Inc. (NAI) is requesting a verification of a wetland delineation performed on an approximately 74-acre tract located north of Rose City, Orange County, Texas.

The 74-acre site is an east-west somewhat rectangular shaped tract lying north of Interstate 10 between Tiger Creek and Ten-Mile Creek (Exhibit 2a). Oil and Gas (O&G) pipelines and an excavated crossover channel constructed by the Orange County Drainage District (OCDD) lie between the two creeks to comprise the northern border (Exhibit 2b). The southern border appears as a relict meander of the Neches River. An overhead power line easement traverses the northwestern corner, an additional O&G pipeline traverses east to west and an excavated relief swale has been constructed (probably during the last clear cut and replant) in the western half of the tract to connect a portion of the relict meander to the OCDD crossover channel. The proposed Farm to Market Road 299 (Vidor Loop) is proposed to traverse the tract from north to south (Exhibit 8).

The nearly level to gently rolling tract is being managed for silviculture and has been thinned in the past 1 to 2 years. Due to its extensive sand reserves, the site is being considered for use as a sand pit. ACR-LP will lease the tract to subcontractors and is planning on allowing excavation of non-wetland areas only. However, as time and funding permits, and if, during verification, permitting is determined to be required by the USACE, wetland impacts will be permitted according to then current legislation to allow the full conversion of the tract from silviculture to sand pit.

GEOLOGIC HISTORY

Orange County, Texas is in the West Gulf Coastal subdivision of the Atlantic-Gulf Coastal Plains geomorphic province of the United States. Surface sediments dip gulf-ward and range from Holocene (recent) to Middle Pleistocene.

JUL 07 2004

Mr. Kenny Jaynes
July 1, 2004
Page 2

Extensive field investigations by NAI showed that the Pleistocene-Beaumont formation makes up the valley walls of the Neches River. Inside the valley walls is the Deweyville Terrace formation, which consists of a large meander belt river plain. The 74-acre tract is within this Deweyville Terrace formation, which is known for its excellent source of sand.

SOILS

USADA-NRCS soil scientists mapped soils developed in this portion of the Holocene-Deweyville meander belt as Spurger-Camptown complex. NAI's careful and extensive field investigations verified both Spurger and Camptown soil series on the site plus some areas of Vertisols in the areas with clay deposits at the land surface.

Spurger soils consist of very deep, moderately well drained, slowly permeable soils that formed in clayey and sandy alluvium. These are on nearly level convex to gently sloping landforms. They have brownish surface layers and light brownish sub-surface layers resting on top of a reddish clay upper sub-soil. Lower sub-soils increase in sand, which is the mark of the Deweyville Terrace formation. Spurger series are classified as Albaquultic Hapludalfs and are non-hydric.

Camptown soils consist of very deep, very poorly drained and ponded, very slowly permeable soils. These nearly level concave soils formed in loamy and clayey alluvium. They have grayish loamy surface layers and grayish loamy subsurface layers that rest abruptly on grayish clayey sub-soils with brightly colored redoximorphic concentrations. Increases in sand are found in lower sub-soils. Camptown soils are classified as Typic Glossaqualfs and are hydric.

The areas of Vertisol (soils clayey to the surface) occur on both convex and concave landforms. Some areas have gilgai micro relief that is typical of the order of Vertisols.

Vertisols on the convex areas have brownish clayey surface layers, brownish to reddish clayey sub-surface layers with grayish clayey subsoils. These soils classify as Oxyaquic or Aquic Hapluderts and are non-hydric.

Vertisols on concave areas have grayish clayey surface layers and grayish clayey sub-surface with redoximorphic concentrations. Sub-soils consist of grayish clay and the lower sub-soil increase in sand. These concave soils pond water, are classified as Chromic Epiaquerts and are hydric.

JUL 07 2004

Mr. Kenny Jaynes
 July 1, 2004
 Page 3

HYDROLOGY

Being nearly level to gently rolling, a large portion of the tract makes use of sheet flow runoff that runs off site. During an earlier harvest and subsequent replanting into plantation pine, many windrows were created and lie in a north-south direction. Pipelines and windrows have hindered natural drainage patterns in the eastern half of the tract. Gilgai micro-relief is beginning to become apparent in areas containing Vertisols within the northeastern portion. Some depressional areas exhibit signs of wetland hydrology (water marks, water stained leaves, etc.) and create a mosaic of wetland and non-wetland.

SUMMARY

The approximately 74-acre site is currently under silviculture management and is being considered for conversion to a sand pit due to extensive sand reserves located within the Deweyville Terrace system. Several decades ago, windrows were created during a harvest and replant preparation blocking natural drainage patterns. Some depressional areas containing clayey soils within the site are beginning to exhibit signs of wetland hydrology and gilgai micro relief.

There exists within the site areas meeting the three mandatory parameters of a wetland as outlined in the *Corps of Engineers Wetlands Delineation Manual* (Technical Report Y-87-01). As depicted in Exhibit 8, wetlands 1 through 4 are each continuous within themselves. Wetland 5 is a mosaic of wetland and non-wetland containing approximately 42% wetland based on NAI's transect data (Table 2, 283' wetland, 680' non-wetland). These areas are flagged and presently planned for total avoidance with the potential to permit as time and funding permits, should the USACE determine that permitting is required for these areas.

WETLAND I.D.	ACREAGE
1	0.10
2	0.03
3	4.02
4	1.41
5 (Mosaic)	6.46

Table 1. Wetland acreages within the approximately 74-acre tract.

JUL 07 2004

Mr. Kenny Jaynes
July 1, 2004
Page 4

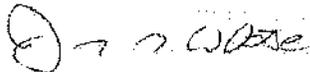
MOSAIC WETLAND TRANSECT		
Distance (Feet)	Wetland Length	Non-Wetland Length
0-44	44'	
44-191		147
191-222	31	
222-238		16
238-410	172	
410-510		100
510-526	16	
526-660		134
660-680	20	
Total	283'	397
Total Length overall - 680'		

Table 2. Transect distance data for mosaic transect.

Please contact us to schedule a site visit should you deem it necessary.

Sincerely,

NORTHRUP ASSOCIATES, INC.



James G. White
Natural Resource Manager

JW:jw

Enclosure

Complainant's Ex. 46



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1229
GALVESTON, TEXAS 77553-1229

REPLY TO
ATTENTION OF:

August 2, 2004

Compliance Section

SUBJECT: D-16282; ACR-LP, 74-Acre Tract, Rose City, Orange County, Texas

Mr. James G. White
Natural Resource Manager
Northrup Associates, Inc.
9328 Westview Drive, Suite 100
Houston, Texas 77055

Dear Mr. White:

This concerns your verification request on a 74-acre tract for ACR-LP. The subject tract is located between Tiger and Ten Mile Creeks, north of Interstate 10 in Rose City, Orange County, Texas.

Based on your July 30, 2004 revised wetland delineation report and our July 29, 2004 site visit, we concur that the site contains 8.5-acres of wetlands adjacent to Tiger and Ten Mile Creeks. Therefore, any discharge of dredged or fill material (including mechanized land clearing) into these areas will require a Department of the Army permit prior to the initiation of any work. These wetlands met the criteria of the 1987 Wetland Delineation Manual and are subject to jurisdiction pursuant to Section 404 of the Clean Water Act.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This approved jurisdictional determination, based on the information provided with your request, is valid for 5 years from the date of this letter, unless new information warrants a revision of the determination prior to the expiration date. Please reference determination file number D-16282 in future correspondence pertaining to this subject. The enclosed sheets

~~JOHNSON/jw/6353~~
~~CE/VG-PE-RC~~

-2-

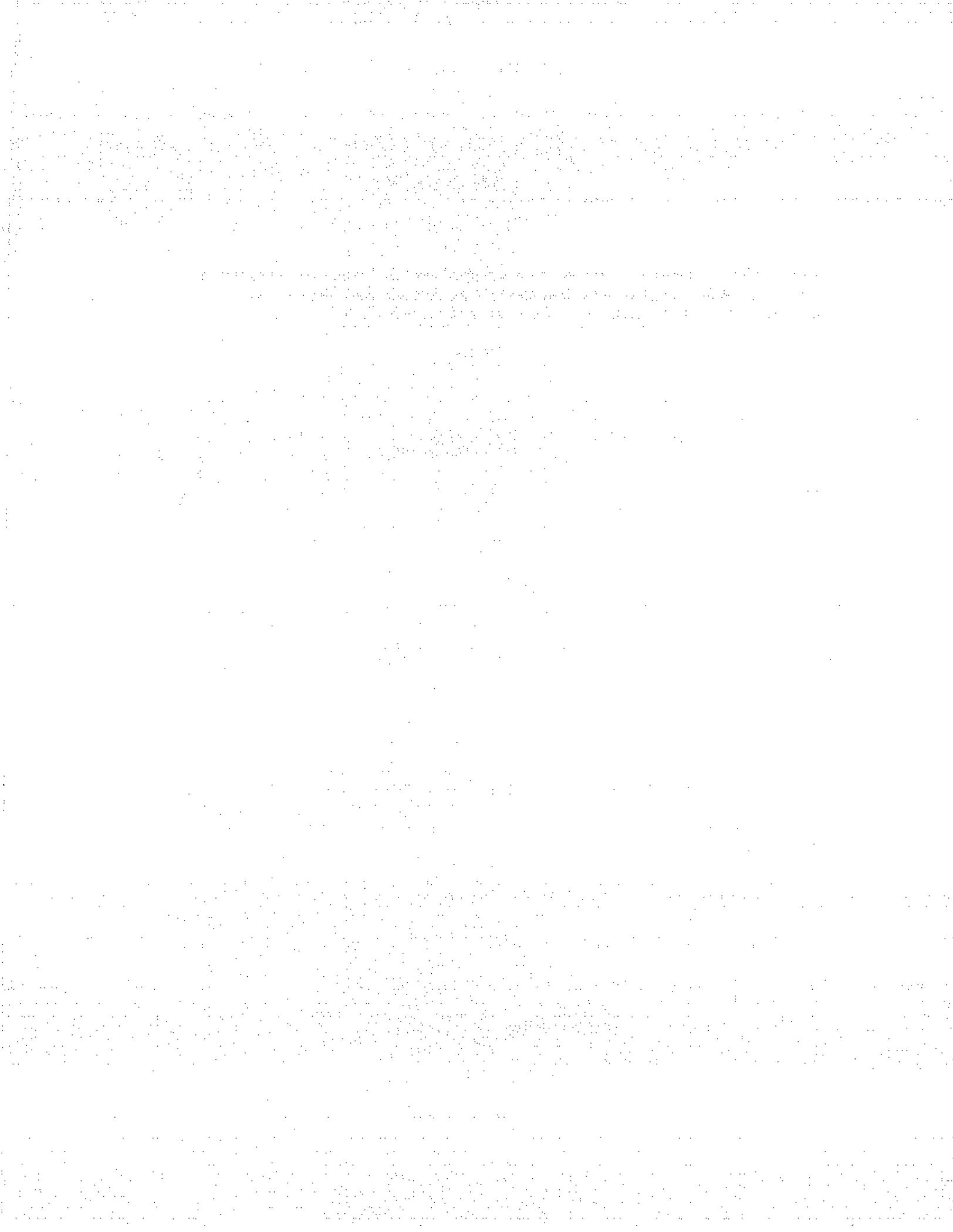
provide information regarding the administrative appeal process. If you have any questions concerning this determination or possible appeal of this determination, please contact Mr. Dwayne Johnson at the letterhead address or by calling 409-766-6353.

Sincerely,

Kenny Jaynes
North Unit Leader

~~JAYNES~~
~~CE/VG-PE-RC~~

Enclosure



D-16395

SW 6-2004-01372

D 16395
20-401372

AUG 09 2004



NORTHROP ASSOCIATES, INC.
LAND PLANNING • ENVIRONMENTAL • REAL ESTATE CONSULTANTS

August 5, 2004

Mr. Kenny Jaynes
North Compliance Unit, Galveston
U.S. Army Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Re. Request for Jurisdictional Determination on an Approximate 6-Acre
Active Borrow Pit Owned by ACR-LP and Operated in
Vidor, Orange County, Texas

Dear Mr. Jaynes,

On behalf of ACR-LP, Northrup Associates, Inc. (NAI) is requesting a Jurisdictional
Determination on an active borrow pit located approximately 3 miles north of IH-10 in Vidor,
Orange County, Texas.

The approximate 6-acre site is an operational borrow pit lying partially within the 100-year and
500-year flood plains (Exhibit 4). Based on color infrared photos, the USGS map, and the
surrounding vegetation, the area of operation was excavated within non-wetlands. In addition, a
non-wetland corridor dominated by loblolly pine (*Pinus taeda*) lies between the existing mining
operation and jurisdictional waters.

The site lacks a surface hydrologic connection to jurisdictional waters and the existing borrow pit
exhibits no ordinary high water mark.

Furthermore, on January 8, 2003, Arville Touchet and I accompanied Mr. Andy Williams and
Mr. Jayson Hudson during a site reconnaissance and evaluation visit. No wetland violations
were identified during the tour and none have been brought to our attention since the USACE
visit.

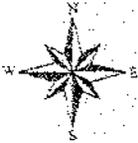
Please respond at your earliest convenience.

Sincerely,

NORTHROP ASSOCIATES, INC.

James G. White
Senior Environmental Specialist/
Project Manager

Enclosure



ACR-LP 6-Acre Operational Borrow Pit

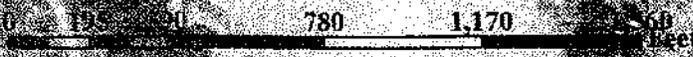
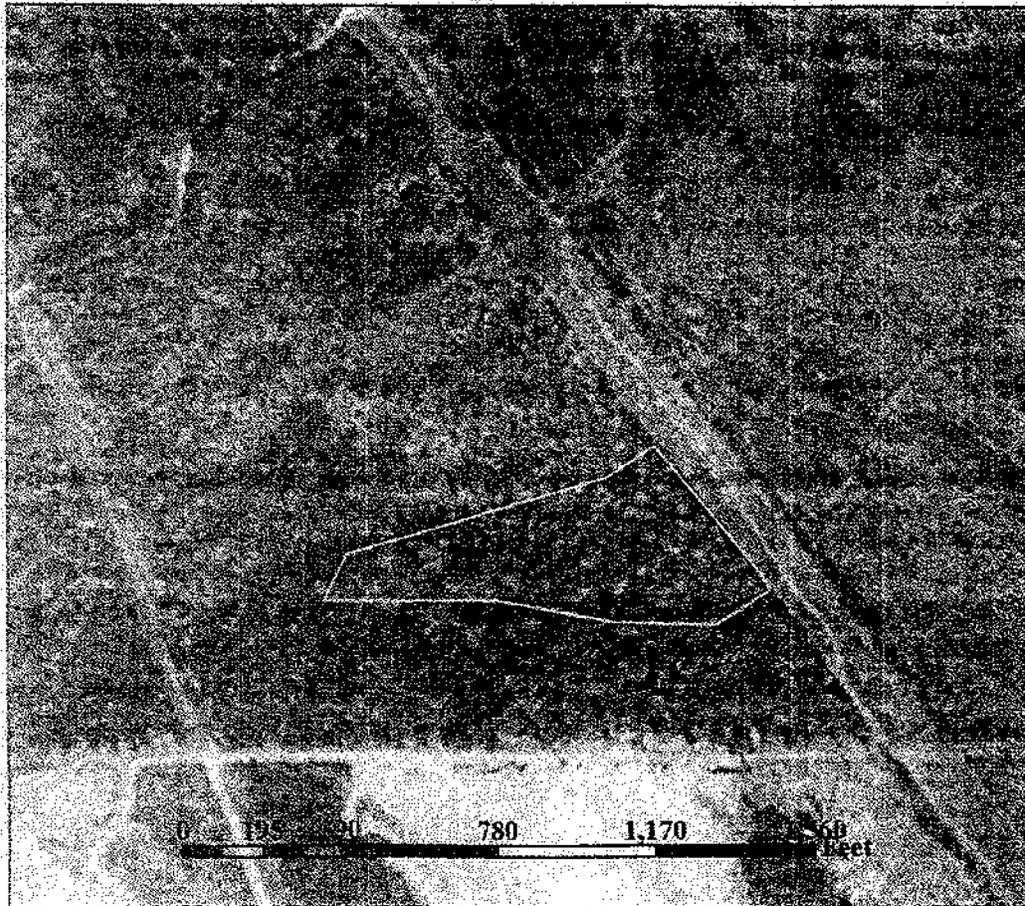


Exhibit 2 Site Map

Legend

 Borrow Pit

AERIAL
Source: TNRIS
1m DOQQ; Pine Forest
SE Quad (1998)
UTM Zone 15
NAD 83 CRS 98
Date: 08/05/04

 **NORTHROP ASSOCIATES, INC.**
LAND PLANNING • ENVIRONMENTAL REAL ESTATE CONSULTANTS

6328 WESTVIEW DRIVE, SUITE 100, HOUSTON, TEXAS 77066 713/461-0486
Fax: 713/463-5629

Complainant's Ex. 46

AUG 9 9 2004

ACR-LP 6-Acre Operational Borrow Pit

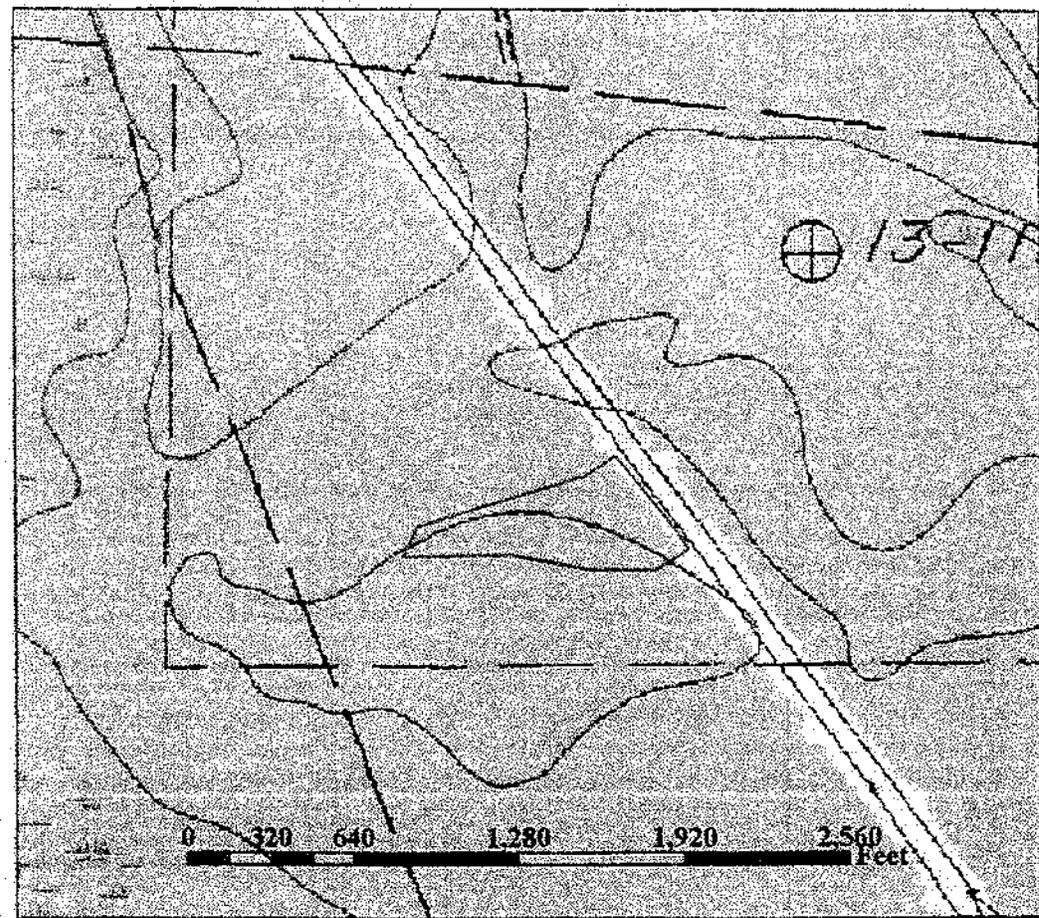
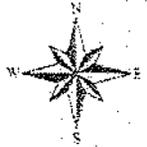


Exhibit 3 USGS Map

Legend

 Borrow Pit

Source: TNRUS
7.5min Quad: Pine Forest
(1989)
UTM Zone 15
NAD 83 GRS 80
Date: 06/28/04

 **NORTHRUP ASSOCIATES, INC.**
LAND PLANNING • ENVIRONMENTAL • REAL ESTATE CONSULTANTS

9328 WESTVIEW DRIVE, SUITE 100, HOUSTON, TEXAS 77055 713/461-3489
Fax: 713/463-5033



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1229
GALVESTON TX 77553-1229

December 29, 2004

Compliance Section

SUBJECT: D-16395; ACR-LP, Jurisdictional Determination, Tiger Creek, Vidor,
Jefferson County, Texas

Mr. Jimmy G. White
Senior Environmental Specialist/ Project Manager
Northrup Associates, Inc.
9329 Westview Drive, Suite 100
Houston, Texas 77055

Dear Mr. White:

This concerns your request for a jurisdictional determination on behalf of ACR-LP for the borrow pit. The project area is located north of Interstate 10, near Tiger Creek, in Vidor, Jefferson County, Texas.

Based on a desk review of the information you submitted, U.S.G.S. Topographic Map, 1995 Digital Orthophoto Quarter-Quadrangle, Flood Insurance Rate Map for Jefferson County, National Wetland Inventory Map and our December 27, 2004 site visit, we conclude that the borrow pit is not a water of the United States. Therefore, the discharge of dredged or fill material within the borrow ditch is not subject to Section 404 of the Clean Water Act and does not require a Department of the Army permit.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This approved jurisdictional determination is valid for 5 years from the date of this letter, unless new information warrants a revision prior to the expiration date. Please see the enclosed sheets regarding the administrative appeal process for jurisdictional determinations. In addition, please note that the area immediately north of the borrow pit appears to have areas that may meet

Complainant's Ex. 46

JMH
HUDSON/jw/3108
CESWG-PE-RC

-2-

the criteria of the 1987 Corps of Engineers Wetland Delineation Manual. If you have any questions concerning this matter, please reference file number D-16395 and contact Mr. Jayson M. Hudson at the letterhead address or by telephone at 409-766-3108 or email at jayson.m.hudson@swg02.usace.army.mil.

Sincerely,

Kenny Jaynes
Leader, North Compliance Unit

JMH
FOR JAYNES
CESWG-PE-RC

Enclosures