

APR. 10 '91 13:35 DA CE GAL DIST

P.02



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1220
GALVESTON, TEXAS 77552-1220

APR 10 1991

REPLY TO
ATTENTION OF:

Compliance & Special
Actions Section

SUBJECT: D-3365; Henry Stevenson, 80 Acre Sand Pit

Mr. Henry Stevenson, Jr.
P.O. Box 1119
Mauriceville, Texas 77625

Dear Mr. Stevenson:

This is in response to your 11 January 1991 letter requesting a determination of permit requirements for a proposed 80 acre sand pit and access road. The site is located near Vidor, Orange County, Texas.

No permit will be required for excavation of the sand pit since that portion of the project will not involve the discharge of fill material.

The minor road crossing located on the eastern arm of the slough, within the pipeline right-of-way, is authorized by nationwide permit 14 provided the crossing is culverted or otherwise designed to prevent the restriction of, and to withstand, existing flows.

This verification will be valid until the nationwide permit is modified, reissued or revoked. All nationwide permits are scheduled to be modified, reissued or revoked prior to January 13, 1992. It is incumbent upon you to remain informed of changes to the nationwide permits. The Corps will issue a public notice announcing any changes when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the nationwide permit is modified or revoked, you will have twelve months from the date of modification or revocation to complete the activity under the present terms and conditions of this nationwide permit.

-2-

Should you have any questions regarding this matter, please contact Mr. James S. Smith at the above letterhead address or telephone (409) 766-3941.

Sincerely,

Fred L. Anthamatten
Fred L. Anthamatten
Chief, Compliance and Special
Actions Section

D10400
199900714

MAY 7 1999

May 3, 1999

Mr. John P. Davidson II
U. S. ARMY CORPS OF ENGINEERS
Galveston District
Evaluation Section
P. O. Box 1229
Galveston, Texas 77553-1229

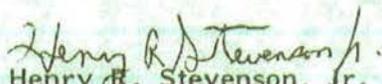
Dear Mr. Davidson:

I, **HENRY R. STEVENSON, JR.**, request a Wetland Delineation on a
33-acre tract of land, just south of Bonner Turnaround, Vidor, Texas.

Will mark location on enclosed map.

Thank you for your cooperation in this regard.

Sincerely,


Henry R. Stevenson, Jr.
2085 Galway
Vidor, Texas 77662
(409) 769-6088

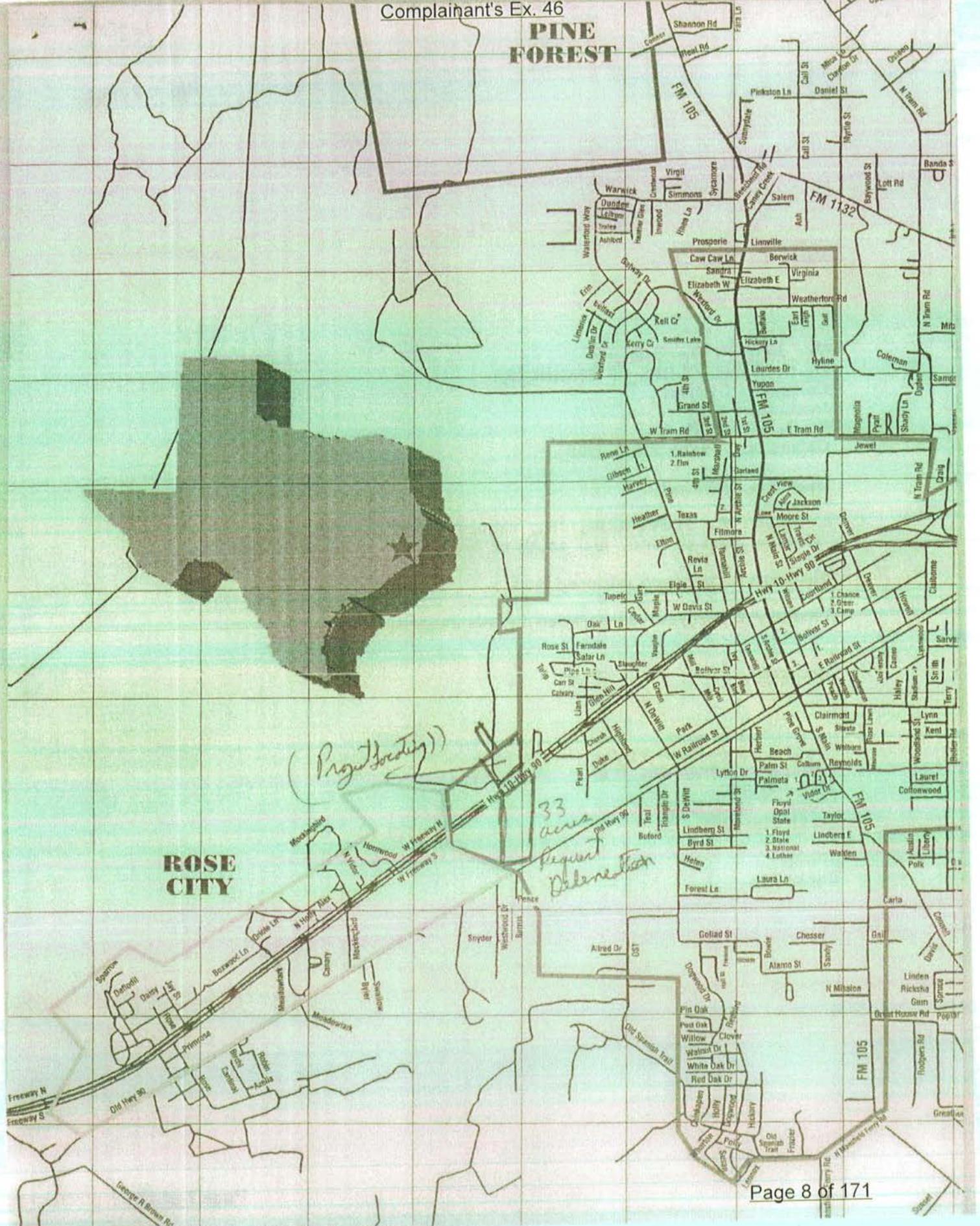
JPD/lr
Enclosure

PINE FOREST

ROSE CITY

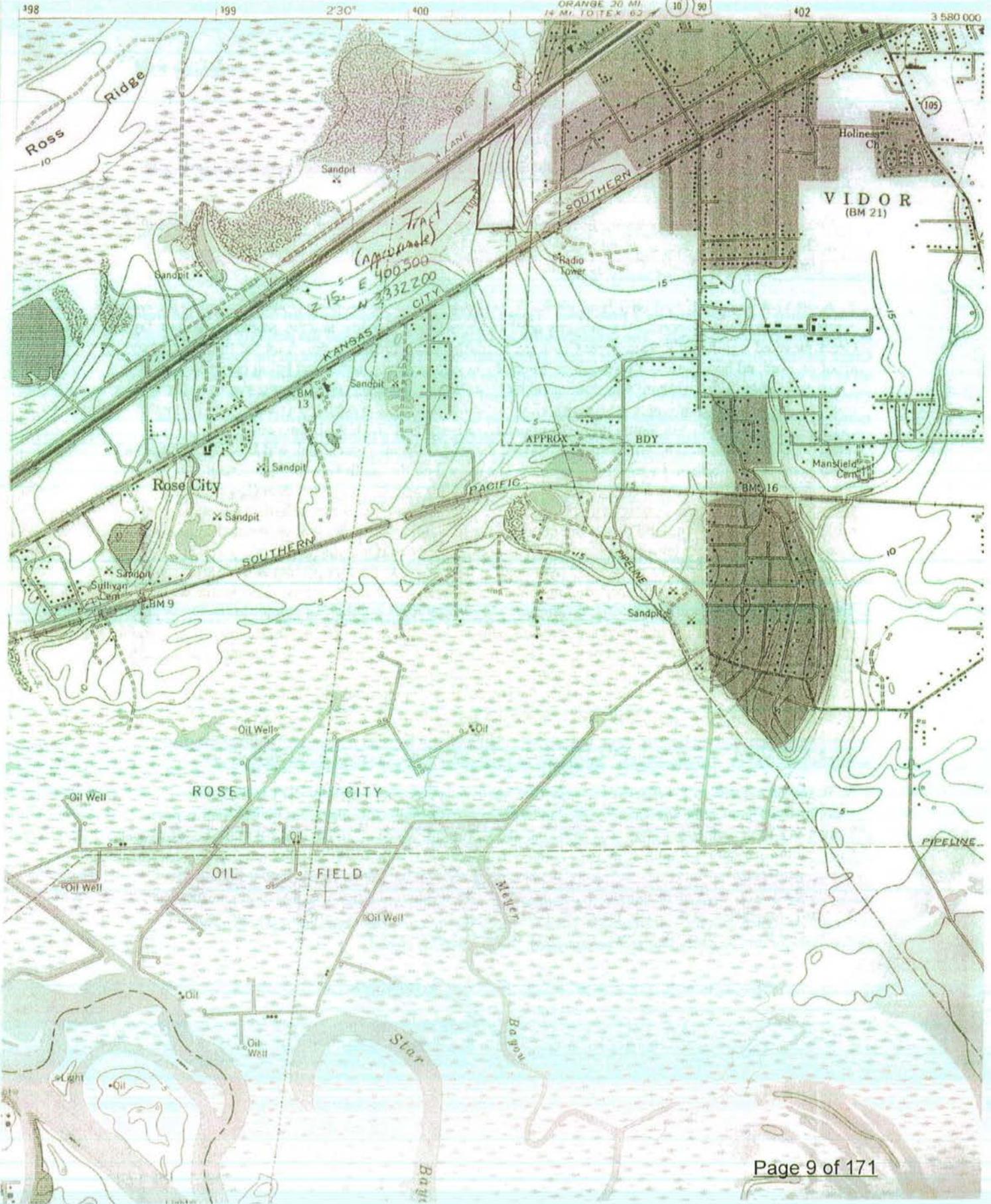
(Project Boundary)

*33 acres
Request
Deletion*



D-10400 Henry R. Stevenson, Jr

7.5 MINUTE SERIES



CESWG-PE-RC (1145)

3 February 2003

MEMORANDUM FOR THE FILE

SUBJECT: D-10400; Henry R. (Sonny) Stevenson, Jr., Jurisdictional Delineation, 33-Acre Tract, Vidor, Orange County, Texas

1. Mr. Henry R. (Sonny) Stevenson, Jr. requested, by letter dated 3 May 1999, a jurisdictional delineation on a 33-acre tract. The tract is located south of the Interstate Highway 10 (IH-10) and Church Street intersection, in Vidor, Orange County, Texas.
2. A site visit was conducted on 3 June 1999. Tiger Creek crosses the property from northeast to the west-central portion of the property. The property north of Tiger Creek was low and the property south of Tiger Creek elevated significantly from Tiger Creek going southward. I took data points on the tract and staked all of the wetland boundaries. I found three wetlands on the tract with the largest being between Tiger Creek and IH-10. This wetland was dominated by lizard's tail (Saururus cernuus), red maple (Acer rubrum), sweet gum (Liquidambar styraciflua), Chinese tallow (Sapium sebiferum) and dwarf palmetto (Sabal minor). The soil was saturated in the upper 12 inches and had a low-chroma color with redoximorphic features. The wetland encompassed the area between Tiger Creek and IH-10, except for a small berm on the north and west property lines. The upland on the south side of Tiger Creek was dominated by southern red oak (Quercus falcata), yaupon (Ilex vomitoria), sweet gum (Liquidambar styraciflua), and water oak (Quercus nigra). There were no wetland hydrology or hydric soil indicators present. I took a second upland data point on top of the hill. This data point was dominated by loblolly pine (Pinus taeda), sweet gum (Liquidambar styraciflua), water oak (Quercus nigra), and yaupon (Ilex vomitoria). Again there were no wetland hydrology or hydric soil indicators present at this sample point. There is a wetland on the south property line that extends south off of the property. This wetland was dominated by Chinese tallow (Sapium sebiferum) and sweet gum (Liquidambar styraciflua). There were water marks present on the trees and sediment deposits on leaves and the area was a depression. I found a small depression that was a wetland near the southeast corner of the property. This wetland was dominated by red maple (Acer rubrum). There were sediment deposits of leaves, oxidized root channels were present in the upper 12 inches and the soil had a low-chroma color with redoximorphic features. I asked Mr. Stevenson to have the wetland boundaries surveyed and provide a copy of that survey to me. Mr. Stevenson agreed. On 6 October 1999, I received a map with the wetland boundaries hand drawn and acreages penciled in. I contacted Mr. Stevenson and asked for a survey but never received one.
3. Based on the site visit, I determined that the 33-acre tract contains waters of the United States, specifically, Tiger Creek and adjacent wetlands. The extent of jurisdictional areas on the tract is not known as a final delineation map was never received. The discharge of dredged or fill material into Tiger Creek or the adjacent wetlands is subject to Section 404 of the Clean Water Act and requires a Department of the Army permit. However, we received a new request, by letter dated 19 December 2002 and on behalf of ACR, L.P. (Sonny Stevenson is a partner), to verify a jurisdictional delineation conducted by Northrup Associates on the same tract (D-14242). Since we are currently verifying a jurisdictional delineation for this property that will be surveyed, file D-10400 is closed.


John Davidson
South Unit Leader
Compliance Section



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:

July 9, 1999

Enforcement Section

SUBJECT: I-3901; Unauthorized Fill in Waters of the United States

Mr. Henry R. (Sonny) Stevenson
2085 Galway
Vidor, Texas 77662-2954

Dear Mr. Stevenson:

This concerns the unauthorized discharge of fill material into waters of the United States, specifically adjacent wetlands. The activity is located immediately north of the Interstate Highway 10, and Tiger Creek inter-section, in Vidor, Orange County, Texas.

The Corps of Engineers has the authority to regulate certain work under provisions of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Section 10 regulates the performance of work and the placement of structures in navigable waters of the United States. Section 404 regulates the discharge of fill material into waters of the United States, including wetlands. Based on our March 31, April 8, and April 16, 1999, site visits, we determined that approximately 1.6 acres of adjacent wetlands were impacted by the unauthorized discharge of fill material. This activity is in violation of Section 404.

Based on the nature of the project and an evaluation of the documents and factors concerning this unauthorized work, we have determined that an after-the-fact permit application will be evaluated for the unauthorized fill in adjacent wetlands. A permit packet is enclosed for your use. Additionally, you must sign the enclosed tolling agreement, which makes stipulations concerning the statute of limitations for this violation. The application, along with the necessary drawings, and the tolling agreement must be submitted within 30 days from the date of this letter.

Please reference Case Number I-3901 in future correspondence pertaining to this subject. If you have any questions or require additional information, please contact Mr. Davidson at the letterhead address or by telephone at 409-766-3933.

Sincerely,

Original Signed By

Fred L. Anthamatten
Acting Chief, Enforcement Section

Enclosures

1107
DAVIDSON/3933
CESWG-PE-RC

UNAUTHORIZED ACTIVITY STATEMENT OF FINDINGS: Case I-3901

1. Responsible Party: Mr. Henry R. (Sonny) Stevenson, 2085 Galway, Vidor, Texas 77662-2954 is the party responsible for the unauthorized activity.
2. Project Description and Location: The project involves the unauthorized discharge of fill material into approximately 1.6 acres of waters of the United States, specifically adjacent wetlands. The purpose of the project is to construct a building site and road. The project site is located north of the Tiger Creek and Interstate Highway 10 intersection, in Vidor, Orange County, Texas.
3. Jurisdictional Determination: Adjacent wetlands are waters of the United States. The activity is subject to Department of the Army jurisdiction pursuant to Section 404 of the Clean Water Act.
4. Narrative: An anonymous individual reported the unauthorized activity on 15 March 1999. The site was inspected on 31 March, 8 April, and 16 April 1999. The site visits confirmed that unauthorized fill material discharged into waters of the United States directly impacted approximately 1.6 acres of adjacent wetlands. A warning letter was sent to Mr. Stevenson on 7 April 1999. Mr. Stevenson stated, in his 20 April 1999 reply to the warning letter, that he was unaware he had impacted any wetlands and that he agreed to discontinue work. Mr. Stevenson also stated he would offer mitigation and would like to apply for a permit to fill the wetlands.
5. Environmental Impact and Agency Recommendations:
 - a. Environmental Impact: The unauthorized fill directly impacted approximately 1.6 acres of adjacent wetlands dominated by bald cypress (Taxodium distichum), red maple (Acer rubrum), alligator weed (Alternanthera philoxeroides), black willow (Salix nigra) and Chinese tallow (Sapium sebiferum). The fill eliminated and degraded foraging and resting habitat for juvenile and adult mammals, reptiles, amphibians, birds, and fish that utilize cypress swamps. These species include, but are not limited to, nutria, raccoons, deer, alligators, snakes, frogs, herons, and egrets.
 - b. Agency Recommendations: The unauthorized activity was not coordinated with the U.S. Environmental Protection Agency, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or the Texas Parks and Wildlife Department. These agencies will receive an opportunity to comment on the proposed development during the public notice review that results from the after-the-fact permit application.

UNAUTHORIZED ACTIVITY STATEMENT OF FINDINGS: Case I-3901

6. Conclusion: We have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this unauthorized work in waters of the United States. Mr. Stevenson discharged fill material into approximately 1.6 acres of adjacent wetlands. Since the activity does not qualify as any of the four specific exemptions under 33 CFR 326.3(e)(1), the appropriate resolution of this case is to allow Mr. Stevenson to apply for an after-the-fact permit. Should Mr. Stevenson fail to obtain an after-the-fact permit, the matter could be processed through an alternative dispute resolution, or referred to the Environmental Protection Agency for assessment of an administrative penalty and/or issuance of a restoration order, or referred to the United States Attorney's Office.

OK
CUTLER
CESWG-PE-RC
NANNINGA
CESWG-PE-RE
John 7/8/99
MOORE
CESWG-OC

7/10/99
(DATE)

Fred L. Anthamatten
FRED L. ANTHAMATTEN
Acting Chief, Enforcement Section

Public reporting burden for this collection of information is expected to average 10 hours per response, although the majority of applications 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.

AFTER THE FACT 18901

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. 21790	2. FIELD OFFICE CODE	3. DATE RECEIVED JUL 15 1999	4. DATE APPLICATION COMPLETED
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ITEMS BELOW TO BE FILLED BY APPLICANT

5. APPLICANT'S NAME Henry R. Stevenson, Jr. / ACR-LP.	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) None
6. APPLICANT'S ADDRESS 2085 Galway Vidor, Texas 77662-2954	9. AGENT'S ADDRESS N/a
7. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence (AC 409) 769-6088 b. Business Same as above. Emergency: (AC 409) 883-5111 (wife)	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business

11. STATEMENT OF AUTHORIZATION
I hereby authorize, NONE 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.

Henry R. Stevenson Jr.
APPLICANT'S SIGNATURE
Henry R. Stevenson, Jr.

May 3, 1999

DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)
Bonner Turn Around Property -- IH 10 West - Vidor, Texas Orange County

13. NAME OF WATERBODY, IF KNOWN (if applicable) Tiger Creek	14. PROJECT STREET ADDRESS (if applicable) 1200 W. Freeway IH 10, Vidor, Texas
15. LOCATION OF PROJECT Orange COUNTY Texas STATE	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions)
IH 10 - Bonner Turn Around

17. DIRECTIONS TO THE SITE
**West side of Vidor city limits, South IH 10,
[See attached map.]**

Complainant's Ex. 46

Filling property with clean material. Total cy of fill: 16,391.47 cy

19. Project Purpose (Describe the nature & purpose of the project, see instructions)

To provide a roadway to my property.

To construct a mobile home sales facility per Mr. David Perrell (d.p. consulting engineer)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

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

Clean sand and 60/40.

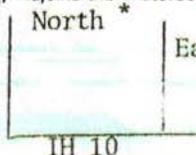
22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

3.8
~~3.5~~ acres

23. Is Any Portion of the Work Already Complete? Yes No 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)

Magnolia Trailer Park, 2185 Freeway Blvd. ← West
Lot #6 Vidor, Texas 77662
Mr. Anderson



Midcon Texas Pipeline Corp.
Entex, Inc., Vidor #1
1-800-733-2490

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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*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.

Henry R. Stevenson, Jr.

SIGNATURE OF APPLICANT
Henry R. Stevenson, Jr.

May 3, 1999

DATE

None

SIGNATURE OF AGENT

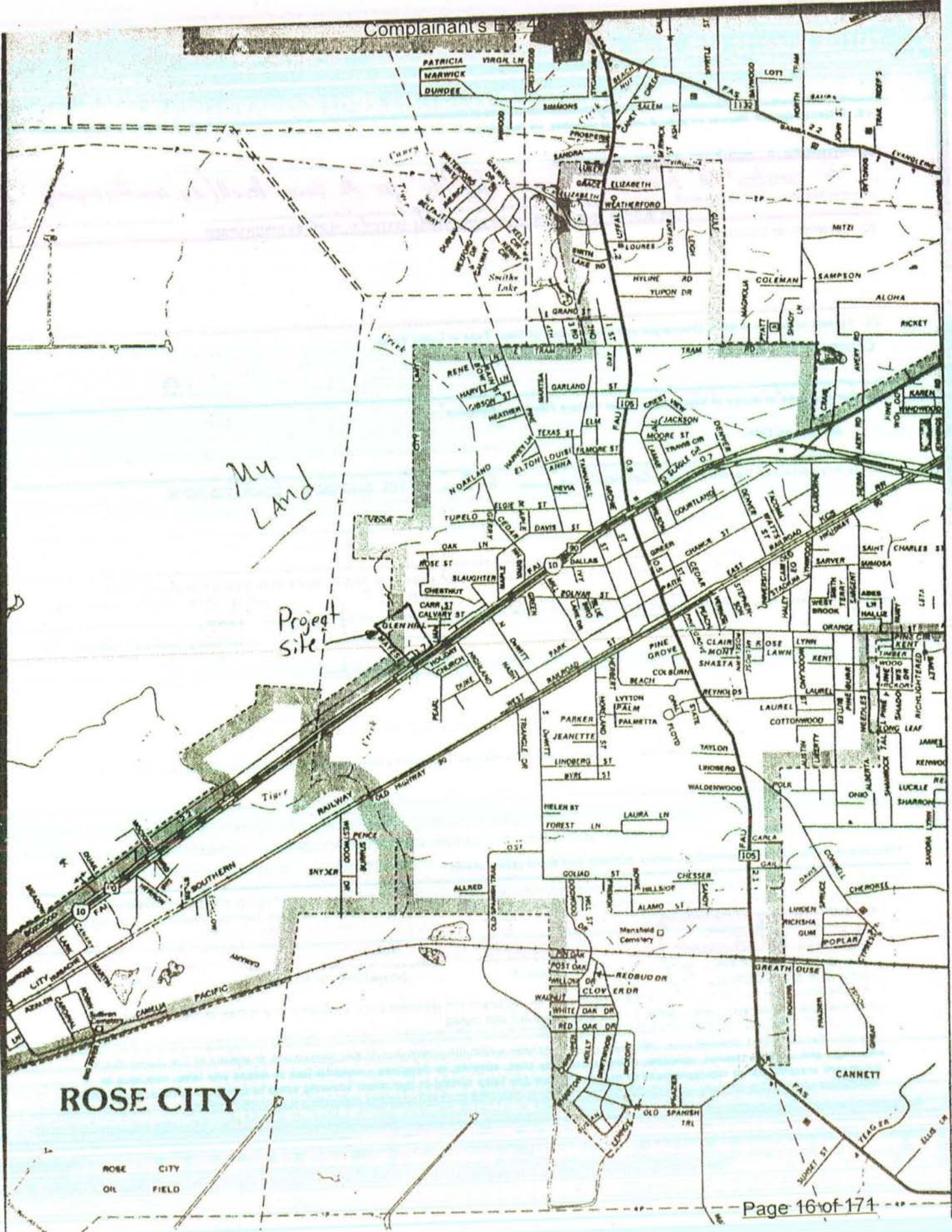
DATE

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.

* I'll offer prime wetland for mitigation on a two for one trade.
The mentioned wetland is called "Duck Roost" - located 3/4 mi. north of IH 10 on my property.
This is prime wetlands.

Complainant's Ex. 4



PERMIT APPLICATION - 21790

31/11/2000
Yagecic/3133
CESWG-PE-REENVIRONMENTAL ASSESSMENT
AND
STATEMENT OF FINDINGS1. Name and Address of Applicant.

Henry R. Stevenson, Jr.
2085 Galway Drive
Vidor, Texas 77662-2954

2. Corps Authority. Section 404 of the Clean Water Act.

3. Project and Site Description. The applicant is seeking after-the-fact authorization to retain fill placed in 1.58 acres of wetlands without a permit, to construct a mobile home retail sales facility. The wetlands at the proposed project site are forested wetlands dominated by bald cypress, red maple, alligator weed, black willow, and Chinese tallow. As mitigation, the applicant is proposing to offer 7.90 acres of wetlands in the "Duck Roost" area for conservation at a ratio of 5:1. The project is located at the Bonner turnaround, approximately 6,200 feet southwest of the intersection of State Highway 105 and Interstate Highway 10, on the north side of Interstate Highway 10, at 1200 West Freeway, near Vidor, Orange County, Texas. The proposed mitigation area is located approximately 4,000 feet due north of the proposed project area. The project can be located on the U.S.G.S. quadrangle map entitled: Beaumont East, Texas. The proposed mitigation area can be located on the U.S.G.S. quadrangle map entitled: Pine Forest, Texas.

4. Background Information. An enforcement action was initiated and assigned case number I-3901. The U.S. Army Corps of Engineers, Galveston District, Enforcement Section inspected the project site on 31 March, 8 April, and 16 April 1999 in response to an anonymous report of unauthorized activity. Enforcement confirmed that unauthorized fill material had been discharged into waters of the United States impacting approximately 1.6 acres. Enforcement Section sent a warning letter to the applicant on 7 April 1999. In his reply letter dated 20 April 1999, the applicant agreed to discontinue work and requested a permit for the proposed project. The project was turned over to Permit Evaluation Section to evaluate the after-the-fact application. The applicant originally sought after-the-fact authorization to retain fill placed in 1.58 acres of wetlands without a permit, and to place new fill in an additional 2.21 acres of wetlands, for a total 3.79 acres of filled wetlands, to construct a mobile home retail sales facility. In addition, the applicant offered 7.58 acres of wetlands in the "Duck Roost" area for conservation as mitigation for the original proposed 3.79 acres of fill at a ratio of 2:1. After extensive coordination with this office and the resource agencies, the applicant revised his plan to the current project, limited to retaining the existing fill and offering preservation wetlands at a ratio of 5:1.

PERMIT APPLICATION – 21790

5. Environmental Assessment.

a. Purpose and Need for the Work. The purpose of the project is to retain fill in 1.58 acres of wetlands to address unauthorized activity. The project is needed to construct a retail mobile home sales facility.

b. Alternatives. A key provision of the 404(b)(1) guidelines is the “practicable alternative test” which requires that “no discharge of fill material shall be permitted if there is a practicable alternative to the proposed fill which would have a less adverse impact on the aquatic ecosystem.” This is especially true when the proposed project is not water dependent. The applicant must demonstrate that there are no less damaging sites available and that all onsite impacts to waters of the United States have been avoided to the practicable extent possible. For an alternative to be considered “practicable”, it must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The applicant is seeking after-the-fact authorization to retain fill placed in 1.58 acres of wetlands without a permit, to construct a mobile home retail sales facility. As mitigation, the applicant will place 7.90 acres of wetlands in the “Duck Roost” area into a conservation easement at a ratio of 5:1. Three alternatives were considered.

(1) No Action Alternative. This alternative involves permit denial. Under this scenario, the applicant would be required to remove the fill from the wetland area, restore the area to the pre-project elevations, and plant the area with wetland vegetation. Under this scenario, the site would be restored to the greatest degree practicable, but diminished wetland functions and values would probably persist for many years. Planted Taxodium distichum (bald cypress) and Acer rubrum (red maple) would mature slowly. Additionally, soil disturbance would increase the likelihood that the site would become infested with Sapium sebiferum (Chinese tallow). Furthermore, this scenario would eliminate the need for compensating mitigation, and would result in a net decrease of wetland functions and values.

(2) Offsite Alternatives. No offsite alternatives were considered, since the primary purpose of the permit application was to address the unauthorized activity at the project site.

(3) Onsite Alternative 1. The first onsite alternative involved retaining fill placed in 1.58 acres of wetlands without a permit, and placing new fill in an additional 2.21 acres of wetlands, for a total 3.79 acres of filled wetlands, to construct a mobile home retail sales facility. This was the applicant’s original proposal. This alternative was deemed unacceptable because it appeared that the project purpose could be fulfilled without placing any additional fill. The site plan shows that the additional area that would be created by placing more fill would only expand the proposed sales facility marginally. Furthermore, the wetlands at the site increase in quality with increasing distance from Interstate

PERMIT APPLICATION - 21790

Highway 10. The additional wetlands which the applicant had sought to fill are probably higher quality than those already filled. This alternative also included an unacceptably low mitigation ratio of 2 acres of preservation for each 1 acre of impact.

(4) Onsite Alternative 2 (Preferred Alternative). Onsite alternative 2 reflects the current proposed plan, and involves retaining the fill placed in 1.58 acres of wetlands without a permit. This alternative is preferred because it allows construction of the applicant's project without impacting additional wetland resources. As stated previously, success of site restoration is uncertain, and given the site's proximity to IH-10, the wetlands already filled may have been marginally compromised. This alternative is also reflects a higher preservation mitigation ratio of 5 acres of preservation for each 1 acre of impact, for a total of 7.9 acres.

c. Environmental Setting. The wetland area in question is located on the fringes of a large regional marsh associated with the Neches River and tributary creeks and bayous. This site is immediately adjacent to Interstate Highway 10, and as such is subject to increasing development pressure. The wetlands at the project site are forested wetlands adjacent to Tiger Creek dominated by Taxodium distichum (bald cypress), Alternanthera philoxeroides (alligator weed), Acer rubrum (red maple), Sapium sebiferum (Chinese tallow) and Salix nigra (black willow). This environmental setting is typically used as foraging and resting habitat for juvenile and adult mammals, reptiles, amphibians, birds, and fish.

d. Environmental Impacts. The possible consequences of this proposed work were studied for environmental concerns, social well-being, and the public interest, in accordance with regulations published in 33 C.F.R. 320-330. All factors which may be relevant to the proposal must be considered. The following factors were determined to be particularly relevant to this application and were evaluated appropriately.

(1) Historic and Cultural Resources. The National Register of Historic Places has been consulted and no properties are listed in the permit area. In addition, the permit area has been so extensively modified that little likelihood exists for the proposed project to impinge upon a historic property, even if present within the affected area.

(2) Water Quality. The Texas Natural Resource Conservation Commission (TNRCC) evaluated the project to ensure that it would not violate established Texas Water Quality Standards pursuant to the provisions of the Section 401 of the Clean Water Act. In their letter dated 9 November 1999, they stated they would be unable to assess this actions within the time period prescribed by 33 C. F. R. Part 325.2(b) and would not request an extension of time, essentially waiving water quality certification.

(3) Endangered Species. No known endangered species or their critical habitat will be affected by the proposed work.

PERMIT APPLICATION - 21790

(4) Fish and Wildlife Values. The proposed project will have minimal impacts on fish and wildlife values.

(5) Essential Fish Habitat. No known impacts will occur to essential fish habitat as listed under the Magnuson-Stevens Fishery Conservation and Management Act.

(6) Wetlands. The work, which has already been performed, will have a negative impact on wetland functions and values in the immediate area. However, the site is a small portion of a large regional wetland complex. Additionally, the proposed preservation of 7.9 acres of high quality wetlands nearby should help to offset impacts by providing perpetual protection against other impacts such as timber harvesting and development.

(7) Aesthetics. The proposed project is similar to other projects in the surrounding area. Therefore, the project will not adversely impact the aesthetic value of the area.

(8) Economics. The proposed project will have a positive economic benefit for the site owner.

(9) Other Federal, State, or Local Requirements. All required Federal, State, and/or local authorization or certifications necessary to complete processing of this application have been obtained. No required authorizations or certifications have been denied and none are known to exist which would preclude finalization of this permit action.

(10) Other Factors Considered. The following factors were considered during the evaluation process but were determined to not be particularly relevant to this application: general environmental concerns, conservation, floodplain values, shoreline erosion and accretion, recreation, navigation, safety, energy needs, flood hazards, economics, water supply and conservation, air pollution, land use, food and fiber production, and mineral needs.

e. Cumulative Impacts. The assessment of cumulative impacts takes into consideration the effects upon an ecosystem of past, present, and reasonably foreseeable future projects. Every application must be considered on its own merits and its impacts on the environment must be assessed in light of historical permitting activity along with anticipated future activities in the area. Although a particular project may constitute a minor impact in itself, the cumulative effect of a large number of such projects could cause a significant impairment of water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

PERMIT APPLICATION - 21790

Through the application of compensating mitigation and careful control on development the effect of multiple projects, such as this one, should not have a significant cumulative impact. The proposed work will have minimal impacts on fish and wildlife values. Overall, the project will result in minimal environmental impacts and minimal impacts on fish and wildlife values.

When considering the overall impacts from past, present, and reasonably foreseeable future projects, their cumulative impacts are not considered to be significantly adverse. It is likely we will receive similar projects in the future which will go through a comparable review process.

f. Findings of No Significant Impact. There have been no significant adverse environmental effects identified resulting from the proposed work. The impact of this proposed activity on aspects affecting the quality of the human environment has been evaluated and it is determined that this action does not require an Environmental Impact Statement.

6. Statement of Findings.

a. Coordination. The formal evaluation process began with publication of a 30-day public notice on 5 October 1999 and scheduled to close on 5 November 1999. The comment period for the public notice was extended 7 days in response to a written request from Texas Parks and Wildlife Department and closed on 13 November 1999. Copies of the public notice were forwarded to concerned Federal, State, and local agencies, organized groups, individuals and navigation districts. These entities included the following:

U.S. Fish and Wildlife Service
 National Marine Fisheries Service
 Environmental Protection Agency
 U.S. Coast Guard
 Texas Natural Resource Conservation Commission
 Texas Parks and Wildlife Department
 Texas Historical Commission
 General Land Office
 National Ocean Survey, Atlantic Marine Center
 American Waterways Operators
 Adjacent Property Owners

b. Response to the Public Notice.

(1) Federal Agencies. The U.S. Fish and Wildlife Service (FWS) submitted a letter, dated 12 October 1999, stating that there appeared to be ample room to operate a small business along the feeder road without the need for additional impacts to wetlands. FWS

PERMIT APPLICATION - 21790

stated they would offer no objection to the existing fill placed in the forested wetlands adjacent to the IH-10 westbound feeder road; however, the wetlands proposed for additional filling are part of a large forested swamp in the Neches river valley. FWS stated that the proposed preservation area is situated within the Neches River floodplain forest and there is no imminent threat to its wetland values; therefore, compensation would be inappropriate. The National Marine Fisheries Service (NMFS) submitted a letter, dated 19 October 1999, stating that the resources affected are not ones for which they are responsible and they have no comments regarding issuance of the permit. No response was received from the U.S. Environmental Protection Agency.

(2) State and Local Agencies. The Texas Parks and Wildlife Department submitted a letter, dated 5 November 1999, stating that they recommend that the applicant compensate for the 1.58 acres of existing fill at a minimum of 3:1 preservation ratio. TPWD recommended that no additional fill be permitted, and that the proposed project be confined to the existing filled area and existing uplands. TPWD stated that the 3:1 preservation ratio was referenced from Texas Department of Transportation's Blue Elbow Swamp Mitigation Bank, which requires low value habitat to be compensated at a ratio of 3:1 when preservation is the method of compensation. The Texas State Soil and Water Conservation Board submitted a letter, dated 1 November 1999, offering no comments on the project. The Texas Natural Resource Conservation Commission (TNRCC) submitted a letter, dated 9 November 1999 stating that they would be unable to independently assess the proposed permit within the time period prescribed by 33 CFR §325.2(b) and under these circumstances TNRCC does not request an extension of time for certification, essentially waiving the water quality certification. The Texas Coastal Coordination Council submitted a letter, dated 19 November 1999, stating that it had been determined that the project is not subject to consistency review under the Texas Coastal Management Program (CMP).

(3) Individual and Organized Groups. No response was received from any individual or organized group.

c. Consideration of Comments. We met with the applicant, TPWD, and FWS on 3 December 1999 to discuss the comments submitted in response to the public notice. The applicant agreed revise his plans to eliminate any additional filling. The applicant agreed to confine the proposed project to the existing filled area and existing uplands. There was a difference of opinion as to the quality of the wetland which had already be filled. TPWD recommended preservation mitigation at a minimum ratio of 3:1. We believed the impacted area was of moderate rather than low quality. The applicant agreed to preserve 7.9 acres of wetlands from the Duck Roost area, for a preservation mitigation ratio of 5:1.

PERMIT APPLICATION - 21790

d. Findings. We find that the applicant has worked with this office and with the resource agencies to minimize the impacts associated with his project. We find that the unavoidable impacts will be adequately mitigated through preservation of 7.9 acres of wetlands in the Duck Roost area. We find that the proposed project is the least damaging practicable alternative. To ensure that the preservation mitigation will be executed, the following special condition will be added to the permit:

a. The permittee shall place 7.9 acres of wetlands in the "Duck Roost" area, as indicated in the project and mitigation plans, into a conservation easement for the purpose of maintaining the aquatic resource and habitat values of the easement area, and for prohibiting development of the easement area, in perpetuity. The permittee must submit the conservation easement to this office, for approval, prior to execution of the easement, within 30 days of the issuance of the permit. Execution of the conservation easement is defined as signing of the easement by all required parties and filing with the appropriate government or tax office. The permittee must provide written documentation that the easement has been executed and is held by an independent third party within 90 days after having received written approval of the conservation easement from this office.

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:

BHB
BENNETT

12 January 2000
(Date)

for Bruce H. Bennett
DON NANNINGA
Chief, Evaluation Section

DEPARTMENT OF THE ARMY PERMIT

Permittee Henry R. Stevenson, Jr.

Permit No. 21790

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 retain fill placed in 1.58 acres of wetlands to construct a mobile home retail sales facility. As mitigation, the permittee shall place 7.90 acres of wetlands in the "Duck Roost" area into a conservation easement. The project will be conducted in accordance with the attached plans in four sheets.

Project Location: At the Bonner turnaround, approximately 6,200 feet southwest of the intersection of State Highway 105 and Interstate Highway 10, on the north side of Interstate Highway 10, at 1200 West Freeway, near Vidor, Orange County, Texas. The proposed mitigation area is located approximately 4,000 feet due north of the proposed project area.

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.

APR 10 2000
\$100.00
REC'D

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:

The permittee shall place 7.9 acres of wetlands in the "Duck Roost" area, as indicated in the project and mitigation plans, into a conservation easement for the purpose of maintaining the aquatic resource and habitat values of the easement area, and for prohibiting development of the easement area, in perpetuity. The permittee must submit the conservation easement to this office, for approval, prior to execution of the easement, within 30 days of the issuance of the permit. Execution of the conservation easement is defined as signing of the easement by all required parties and filing with the appropriate government or tax office. The permittee must provide written documentation that the easement has been executed and is held by an independent third party within 90 days after having received written approval of the conservation easement from this office.

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.

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.

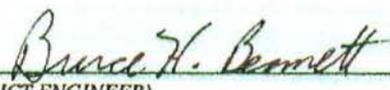


(PERMITTEE)
HENRY R. STEVENSON, JR.

4-8-2000

(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

17 0 APR 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.

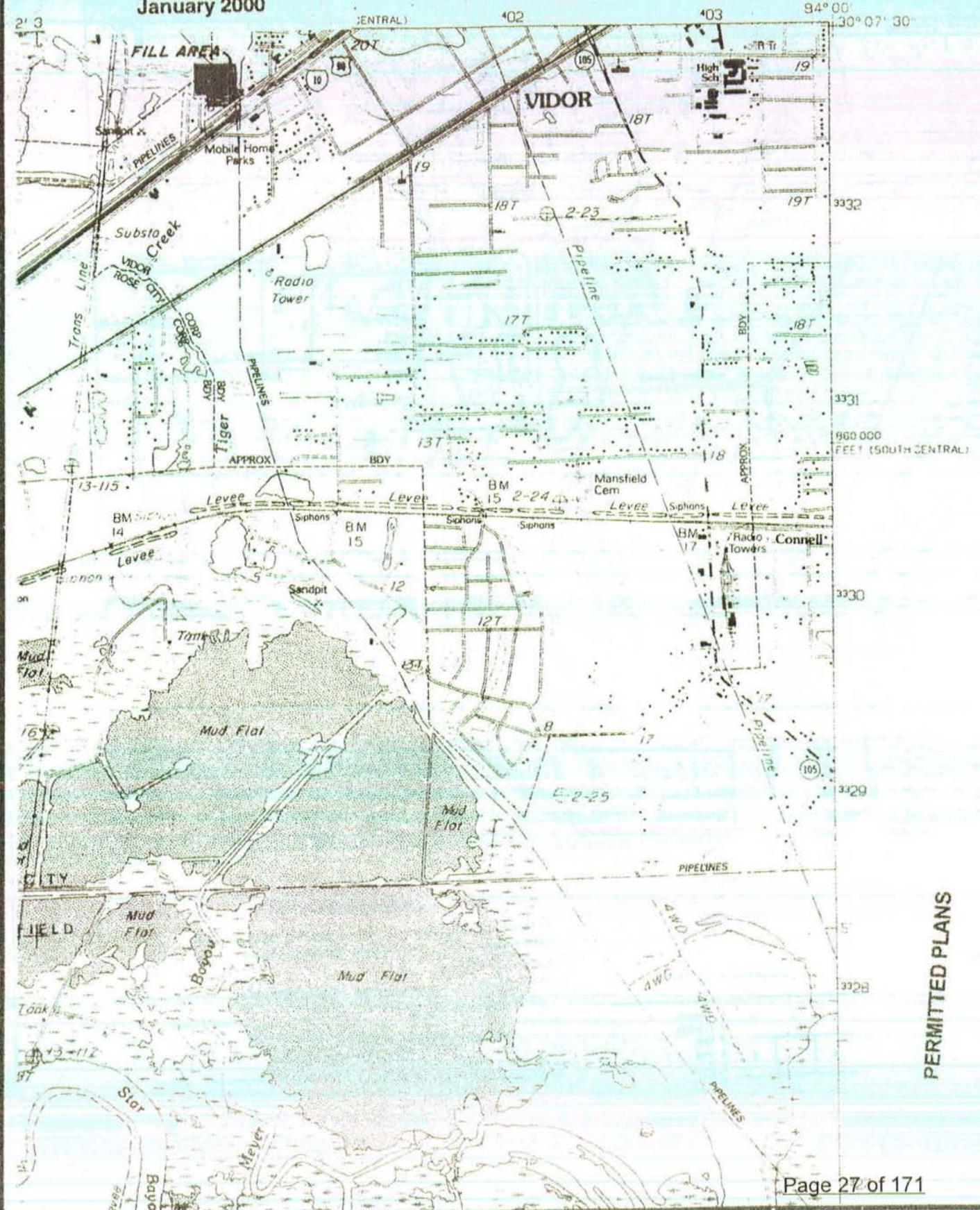
(TRANSFEREE)

(DATE)

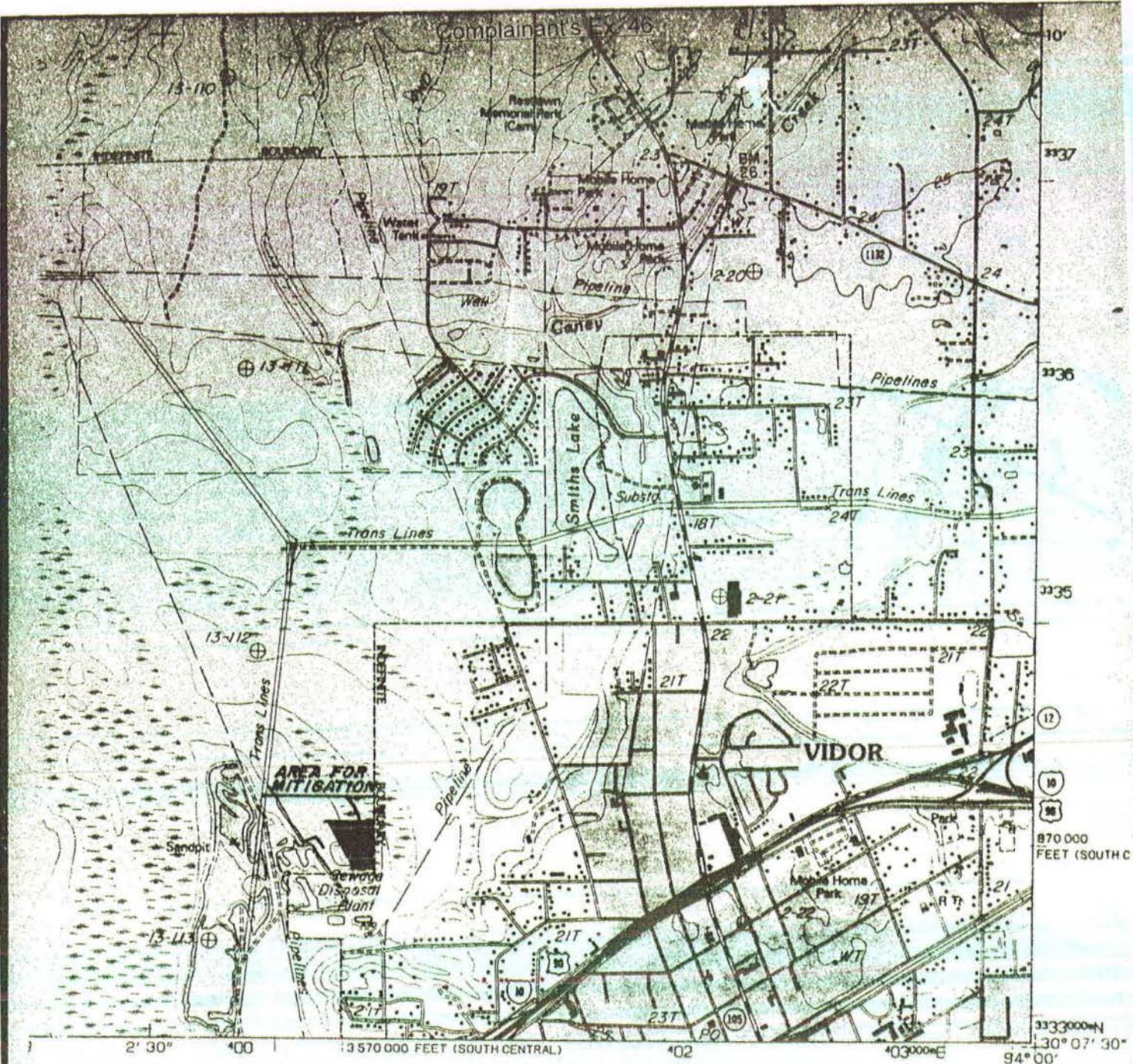
21790
Sheet 1 of 4
Henry R. Stevenson Jr.
January 2000

Complainant's Ex. 46
BEAUMONT EAST QUADRANGLE
TEXAS
7.5 MINUTE SERIES (TOPOGRAPHIC)

AUG 13 1969



PERMITTED PLANS



TOPOGRAPHICAL SURVEY, RESTON, VIRGINIA 1993

10,000
 1:10,000



QUADRANGLE LOCATION

1	2	3	1 Silsbee
			2 Evadale
			3 Gist
4		5	4 Voth
			5 Text
			6 Bea
6	7	8	7 Bea
			8 Terr

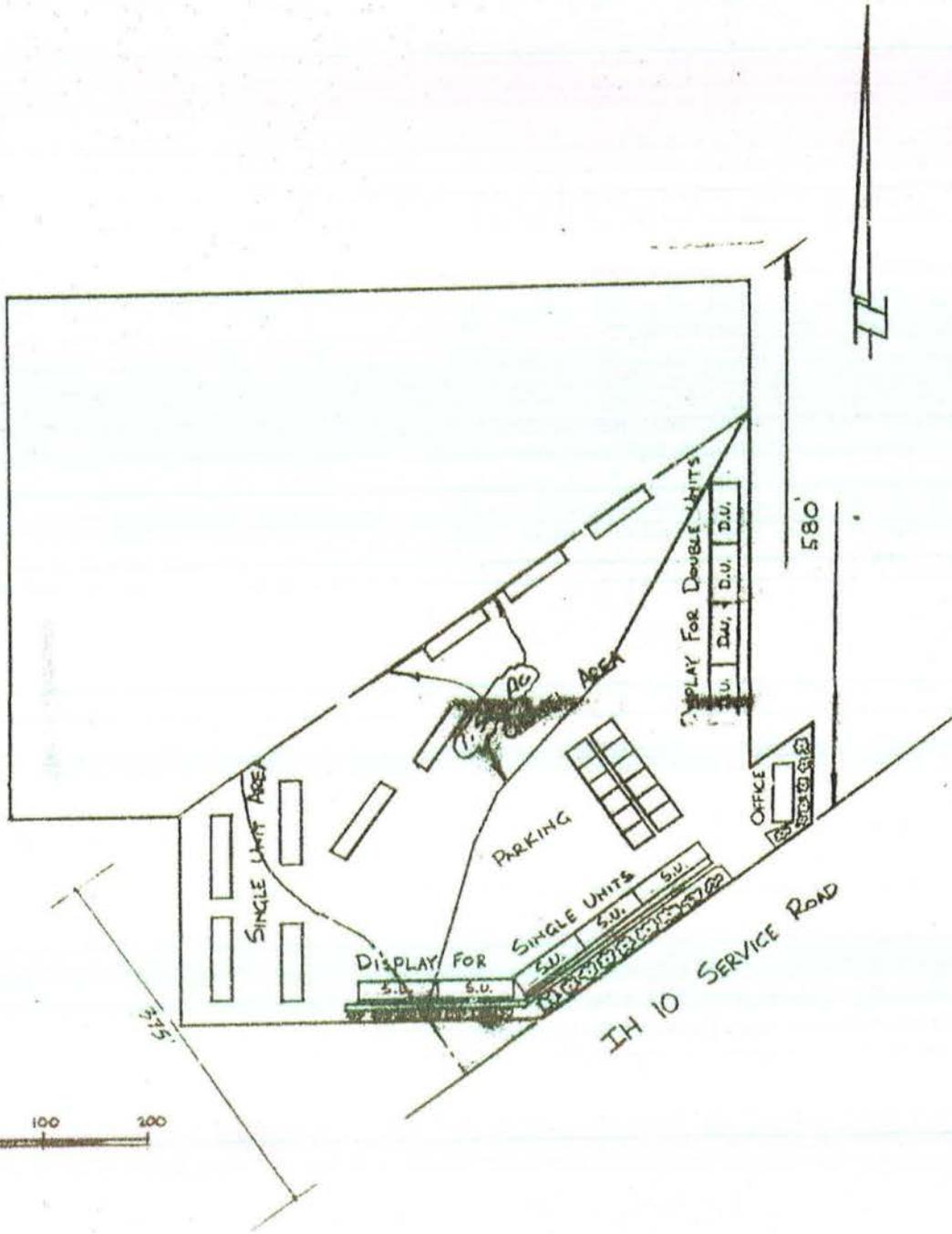
ADJOINING 7.5 QUADRANGLE
 3094-114

ROAD CLASSIFICATION

- Primary highway, hard surface
- Secondary highway, hard surface
- Light-duty road, hard or improved surface
- Unimproved road
- Interstate Route
- U. S. Route
- State Route

21790
 Sheet 2 of 4
 Henry R. Stevenson Jr.
 January 2000

PINE FOREST, TEX.
 PROVISIONAL EDITION 1993
 30094-B1-TF-024



PERMITTED PLANS

21790
 Sheet 3 of 4
 Henry R. Stevenson Jr.
 January 2000

SUBJECT: ACR-LP TRACT - ADJACENT TO IH-10, VIDOR, TEXAS			d.p. NO.: 299-176
BY: J.D.L.			SCALE: SHOWN
CHECKED BY: D.C.P.	DATE: 8-12-99	SHEET 1 OF 3	



ACIP LP TRACT ADJACENT TO IH 10
VILOR, TEXAS
JUN 299 176

PERMITTED PLANS

21790
Sheet 4 of 4
Henry R. Stevenson Jr.
January 2000

SWG-1999-01719
21859
OCT 22 1999



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

October 14, 1999

Department of the Army
Galveston District, Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Attention: Mr. John Davidson, Project Manager

RE: Application for Department of Army Permit: No. 21790
Proposed Hotel/Motel Convention Facility, Orange County, TX.
CMP Project No. 99-0364-F1 (d.p. Job # 299-224)

Dear Mr. Davidson:

Submitted for your review and comments is an application for permit to excavate and place fill in a wetlands area, in the 1000 block of West Freeway Boulevard in Vidor, Orange County, Texas. This application is submitted on behalf of the owner, Mr. Henry R. Stevenson, Jr., representing the developers for this project.

The proposed project will be situated on approximately ten (10) acres of a 33.19-acre tract of land. The enclosed drawing depicts a footprint of the types of building and parking areas this facility may occupy. A final design and layout will be developed for review in the future.

In anticipation of the proposed facility design and the land area it will occupy, the owner is offering to commit the remaining 23 acres into a conservation easement as a wetland mitigation plan. Some of the activities involved with this project will include:

1. Relocating a portion of Tiger Creek that skews across the property from its north east corner near the IH-10 frontage road at Church Street, in a southwestward direction crossing the west boundary line of the property. The new ditch will follow a path along the northerly and then the westerly boundaries of the property.

~~727 6263~~

NOV 12 1999



**d.p. CONSULTING
ENGINEERS**

October 14, 1999

Department of the Army
Galveston District, Corps of Engineers
P.O. Box 1229
Galveston, Texas 77553-1229

Attention: Mr. John Davidson, Project Manager

RE: Application for Department of Army Permit: No. ~~21790~~ **21859**
Proposed Hotel/Motel Convention Facility, Orange County, TX.
CMP Project No. 99-0364-F1 (d.p. Job # 299-224)

Dear Mr. Davidson:

Submitted for your review and comments is an application for permit to excavate and place fill in a wetlands area, in the 1000 block of West Freeway Boulevard in Vidor, Orange County, Texas. This application is submitted on behalf of the owner ACR - L.P.; Mr. Henry R. Stevenson, Jr., represents the developers of this project.

The proposed project will be situated on approximately 33.19 acres of land. The enclosed drawing depicts a footprint of the types of buildings and parking areas this facility may occupy. A final design and layout will be developed for review in the future.

In anticipation of the proposed facility design and the land area it will occupy, the owner is offering to commit a 2:1 trade of lands in the "Duck Roost Lands" north of IH-10 into a conservation easement as a wetland mitigation plan. Some of the activities involved with this project will include:

1. Relocating a portion of a drainage ditch that skews across the property from its north east corner near the IH-10 frontage road at Church Street, in a southwestward direction crossing the west boundary line of the property. The new ditch will follow a path along the northerly and then the westerly boundaries of the property as shown on the accompanying plot plan.

2. Filling the old ditch location with soil excavated from the southerly portion of the property.
3. Filling the 10-acre project site area a minimum of one foot to elevate the site and for drainage purposes.
4. Constructing a lake in the area used to extract fill materials for the site development.

If additional information is required at this time please contact me.

Sincerely,



William V. Larrain, P.E.

LTR761/dw

~~☐~~ P.O.C. Dave Parrell

Job #299-224

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)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, 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. 21859	2. FIELD OFFICE CODE	3. DATE RECEIVED OCT 22 1999	4. DATE APPLICATION COMPLETED
-----------------------------	----------------------	---------------------------------	-------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME Mr. Henry R. Stevenson, Jr.	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent is not required) d.p. Consulting Engineers, Inc.
6. APPLICANT'S ADDRESS 2085 Galway Vidor, Texas 77662	9. AGENT'S ADDRESS P.O. Drawer 2110 Nederland, Texas 77627
7. APPLICANT'S PHONE NOS. W/AREA CODE a. Residence (409) 769-6088 b. Business FAX (409) 769-0688	10. AGENT'S PHONE NOS. W/AREA CODE a. Residence b. Business (409) 727-6263

11. STATEMENT OF AUTHORIZATION

I hereby authorize, d.p. Consulting Engineers, 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.

October, 1999

APPLICANT'S SIGNATURE

DATE

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions) Hotel/Motel Convention Facilities	
13. NAME OF WATERBODY, IF KNOWN (if applicable) Minor Stream Enters Tiger Creek	14. PROJECT STREET ADDRESS (if applicable) 1000 Blk of West Freeway Blvd.
15. LOCATION OF PROJECT Orange COUNTY Texas STATE	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN, (see instructions) Latitude 30°07'06": Longitude 94°01'58" situated Southwest of the intersection of Interstate Highway 10 with Church Road	
7. DIRECTIONS TO THE SITE For locative purpose, beginning at the juncture of the Eastex Freeway (Hwy 69, 96, 287) with Interstate Highway 10 in Beaumont, Texas; thence in an Easterly direction on IH-10 a distance of approximately 4.3 miles to exit 859 (Bonner Turn Around); Continue East on the frontage road approximately 0.8 miles to an unmarked asphalt road called Church Road, intersecting the IH-10 frontage road, said intersection being at the most northeastern corner of the property.	

18. Nature of Activity (Description of project, include all features)

SEE ATTACHMENT

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

SEE ATTACHMENT

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

20. Reason(s) for Discharge The proposed project site will have a minimum of 12 inches of fill material placed over the approximate 10-acre area, designated to situate the proposed facilities. Fill will be placed to elevate the site for drainage purposes.

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards Approximately 17,000 cubic yards of sandy/loamy soil, excavated by trackhoe from an adjacent site will be utilized to fill the project site limits.

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instruction...) 10.05 acres

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

Some minor clearing of trees has taken place to access the site.

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).

SEE ATTACHMENT

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
--------	----------------	-----------------------	--------------	---------------	-------------

NO OTHER CERTIFICATIONS OR APPROVALS HAVE BEEN REQUESTED AT THIS TIME.

*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.

		<i>William R. ...</i>	10/19/99
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.

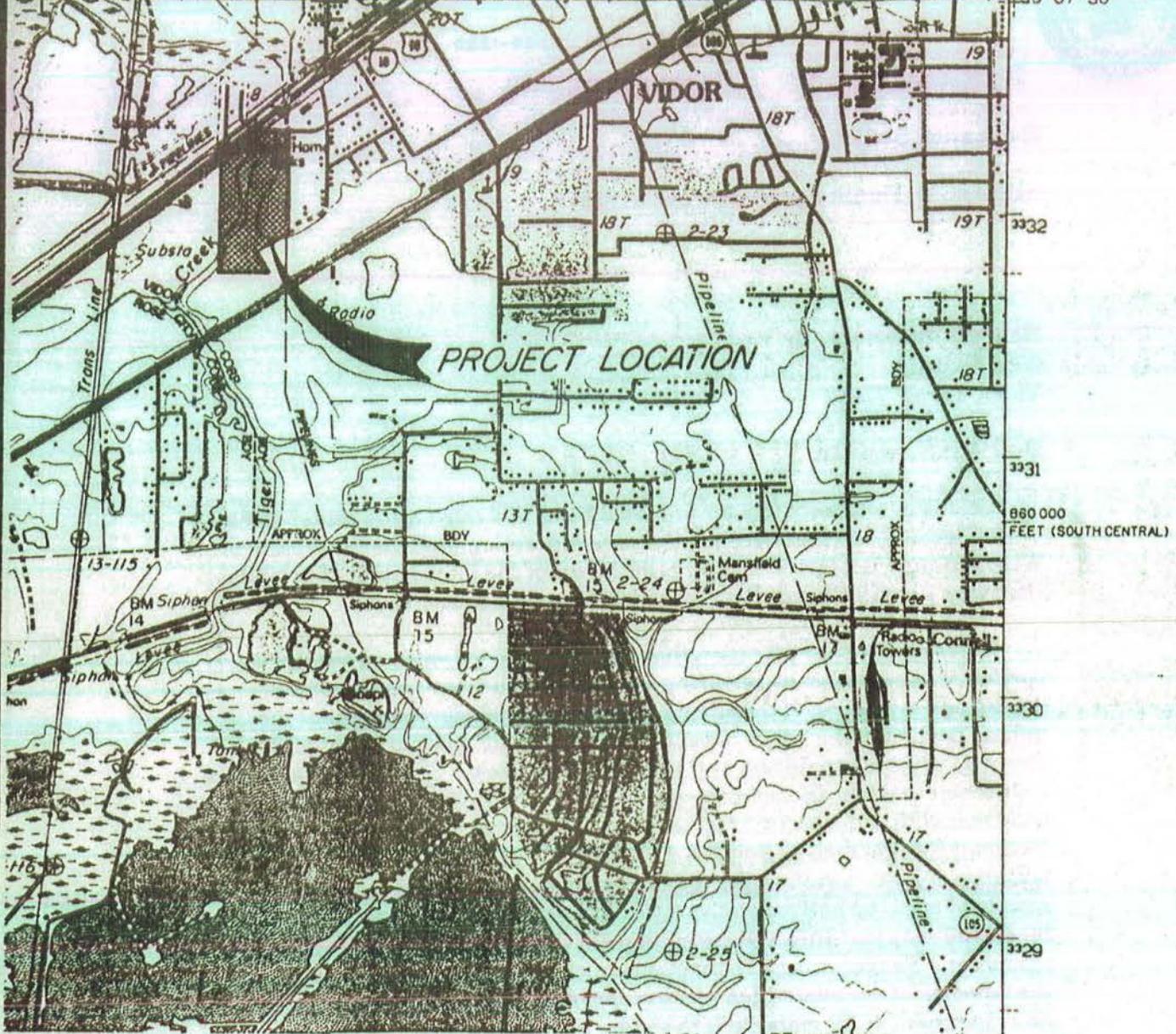
18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations 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.

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

BLAUMONT EAST QUADRANGLE
TEXAS
7.5 MINUTE SERIES (TOPOGRAPHIC)

NOV 12 1999

2° 30' 00" 3 570 000 FEET (SOUTH CENTRAL) 4° 02' 00" 4° 03' 00" 94° 00' 30" 07' 30"



SCALE 1:24 000



CONTOUR INTERVAL 5 FEET

To convert meters to feet multiply by 3.2808
To convert feet to meters multiply by .3048

VICINITY MAP

THIS MAP COMPLIES WITH NATIONAL #
FOR SALE BY U.S. GEOLOGICAL SURVEY
OR RESTON, VIRGII

21859
Sheet 1 of 3
Henry R. Stevenson, Jr.
December 1999



d.p. CONSULTING
ENGINEERS, INC.
409/727-6263

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:

February 24, 2000

Evaluation Section

SUBJECT: Permit Application No. 21859

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

Dear Mr. Stevenson:

This is in reference to your proposed hotel and convention center complex project located 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 in Vidor, Orange County, Texas.

It has come to our attention that you have started work on the upland portion of your project by removing vegetation and trees. As you stated during our inspection of the site on January 4, 2000, development of the upland portion of the site is dependent on obtaining a Department of the Army (DA) permit to fill the wetlands on the property. Since there is a direct connection between the uplands and the area of our jurisdiction, we have determined that the entire tract is subject to Federal review under the National Environmental Policy Act. Therefore, any work performed prior to issuance of a DA permit in the upland portion of your project could impact the results of our alternatives analysis to minimize on-site impacts to the wetlands and may jeopardize our evaluation of the site for cultural and historic resources. We recommend that you discontinue work in the uplands pending the outcome of our evaluation process. Furthermore, please be advised that any placement of fill material into waters of the United States, including wetland areas, performed prior to issuance of a DA permit would be considered a violation of the Clean Water Act.

-2-

If you need additional information, please contact John Yagecic at the letterhead address or by telephone at 409-766-3133.

BHB
BENNETT
CESWG-PE-RE

Sincerely,

Donald Nanninga
Chief, Evaluation Section


NANNINGA
CESWG-PE-RE

Copies Furnished:

William V. Larrain, P.E.
d. p. Consulting Engineers, .nc.
P.O. Drawer 2110
Nederland, Texas 77627

USACE, Galveston District, Compliance Section

PERMIT APPLICATION - 21859

✓
R 10/17/2000
Yagecic/3133
CESWG-PE-RE

ENVIRONMENTAL ASSESSMENT
AND
STATEMENT OF FINDINGS

1. Name and Address of Applicant.

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

2. Corps Authority. Section 404 of the Clean Water Act.

3. Project and Site Description. The applicant proposes to fill 0.99-acre of wetlands and construct two crossings of Tiger Creek. As mitigation for unavoidable impacts, the applicant proposes to purchase 5 credits (i.e. 5 acres) from the Neches River Cypress Swamp Preserve Mitigation Bank. The project is located 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. The USGS Quad reference map is: Beaumont East, Texas.

4. Background Information. The applicant originally proposed construction of a hotel convention center complex on Tiger Creek and associated wetlands. In the original public notice, published on 16 December 1999, the applicant proposed relocation of approximately 1,500 feet of Tiger Creek and filling approximately 10 acres of adjacent wetlands for the purpose of developing a 33.19-acre tract into a hotel, convention center, and retail sales complex. The first proposed revision was provided in our interagency letter, dated 1 May 2000, and involved filling of 3.42 acres of wetlands for construction of the complex and excavation of an additional 1.73 acres of wetlands for borrow material, impacting a total of 5.15 acres of wetlands without relocation of Tiger Creek. The current proposed plan changes the project from a hotel convention center complex to a mobile home sales facility. The applicant now plans to fill 0.99-acre of wetlands and construct two crossings of Tiger Creek. The applicant no longer intends to relocate Tiger Creek. The applicant will use the uplands on the site for storage of mobile home stock. As mitigation for unavoidable impacts, the applicant proposes to purchase 5 credits (i.e. 5 acres) from the Neches River Cypress Swamp Preserve Mitigation Bank.

5. Environmental Assessment.

a. Purpose and Need for the Work. The purpose of the work is to fill 0.99-acre of wetlands and to construct two crossings of Tiger Creek. The work is needed to allow construction of a mobile home sales facility and to provide access to uplands that will be used for storage of mobile home stock.

PERMIT APPLICATION - 21859

b. Alternatives. A key provision of the 404(b)(1) guidelines is the "practicable alternative test" which requires that "no discharge of fill material shall be permitted if there is a practicable alternative to the proposed fill which would have a less adverse impact on the aquatic ecosystem." This is especially true when the proposed project is not water dependent. The applicant must demonstrate that there are no less damaging sites available and that all onsite impacts to waters of the United States have been avoided to the practicable extent possible. For an alternative to be considered "practicable", it must be available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The applicant proposes to fill 0.99-acre of wetlands and construct two crossings of Tiger Creek. Four alternatives were considered.

(1) No Action Alternative. This alternative involves permit denial. Under this scenario, no fill in wetlands and no crossings of Tiger Creek would be permitted. The applicant would be unable to develop his business, due to lack of access to the upland portion of the property. This alternative would protect the wetlands, but would prevent the applicant from benefiting from his property.

(2) Offsite Alternatives. The applicant considered other tracts, but considered the current tract to be highly desirable for retail sales. This tract is located immediately adjacent to IH-10 and the Bonner Turnaround, a high traffic area. In addition, the tract contains a large upland portion that would be suitable for storage and display of mobile home stock.

(3) Onsite Alternative 1. During consultation with the resource agencies, the applicant investigated eliminating fills in the wetlands, and developing his retail sales facility exclusively on the upland portion of the lot. Since the uplands are not located adjacent to the frontage road, the viability of the sales facility would be greatly diminished. The applicant indicated that such sales facilities depend on roadside visibility and accessibility for customer attraction. It was determined that development of a sales facility on the uplands alone would not be economically viable.

(4) Onsite Alternative 2 (Applicant's Preferred Alternative). The applicant's preferred alternative involves filling 0.99-acre of wetlands and construction of two access crossings across Tiger Creek. This alternative maximizes use of the upland portion of the tract, and provides for appropriate compensatory mitigation to offset unavoidable impacts. This alternative will allow the applicant to maximize the use of his property while minimizing impacts to aquatic resources.

c. Environmental Setting. The project is located on Tiger Creek and associated wetlands southwest of the intersection of Interstate Highway 10 with Church Road in Vidor, Orange County, Texas. The wetlands on the site are adjacent to Tiger Creek and appear to serve as flood storage during high water. Tiger Creek at this location is fresh water and is not subject to the ebb and flow of the tide, although Tiger Creek does become tidal downstream

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of this project site. The surrounding region is less developed than the Houston area to the west, but development pressures along IH-10 between Beaumont and Orange are becoming evident. Wetlands on the site are dominated by Saururus cernuus (lizard's tail), Acer rubrum (red maple), Liquidambar styraciflua (sweet gum), Sapium sebiferum (Chinese tallow), and Sabal minor (dwarf palmetto). Uplands on the site are dominated by Quercus falcata (southern red oak), Ilex vomitoria (yaupon), Liquidambar styraciflua (sweet gum), Pinus taeda (loblolly pine), and Quercus nigra (water oak).

d. Environmental Impacts. The possible consequences of this proposed work were studied for environmental concerns, social well-being, and the public interest, in accordance with regulations published in 33 C.F.R. 320-330. All factors which may be relevant to the proposal must be considered. The following factors were determined to be particularly relevant to this application and were evaluated appropriately.

(1) Historic and Cultural Resources. The National Register of Historic Places has been consulted and no properties are listed in the permit area. In addition, the proposed permit work is of such a limited nature and scope that little likelihood exists for the proposed project to affect any historic properties, even if present within the affected project area.

(2) Water Quality. The project is considered a Tier I project. The applicant has agreed to use the Best Management Practices (BMPs) for Tier I projects. Based on the project being a Tier I project and the applicant's signed statement that the applicable BMPs will be used, no further review is required by TNRCC. Therefore, we presume a waiver of the 401 certification pursuant to 33 CFR 325.2(b).

(3) Endangered Species. No known endangered species or their critical habitat will be affected by the proposed work.

(4) Fish and Wildlife Values. The proposed project will have minimal impacts on fish and wildlife values.

(5) Essential Fish Habitat. No known impacts will occur to essential fish habitat as listed under the Magnuson-Stevens Fishery Conservation and Management Act.

(6) Wetlands. As mitigation for unavoidable impacts, the applicant proposes to purchase 5 credits (i.e. 5 acres) from the Neches River Cypress Swamp Preserve Mitigation Bank. With the addition of compensatory mitigation, the overall project will have minimal impacts on wetlands.

(7) Aesthetics. The proposed project is similar to other projects in the surrounding area. Therefore, the project will not adversely impact the aesthetic value of the area.

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(8) Land Use. This project allows the applicant to benefit from his land and is consistent with land use in the surrounding area.

(9) Navigation. Tiger Creek is not navigable. Therefore, navigation will not be adversely effected by this project.

(10) Economics. The project will benefit the applicant by allowing economic development of his property. The project will provide a minor short term economic benefit to the region during construction of the mobile home sales facility, and a minor long term economic benefit to the region by providing employment opportunities at the sales facility.

(11) Other Federal, State, or Local Requirements. All required Federal, State, and/or local authorization or certifications necessary to complete processing of this application have been obtained. Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program. The Texas Coastal Coordination Council confirmed that the project is consistent with the Texas Coastal Management Program by letter, dated 2 October 2000.

No required authorizations or certifications have been denied and none are known to exist which would preclude finalization of this permit action.

(12) Other Factors Considered. The following factors were considered during the evaluation process but were determined to not be particularly relevant to this application: general environmental concerns, conservation, floodplain values, shoreline erosion and accretion, recreation, safety, energy needs, flood hazards, water supply and conservation, air pollution, food and fiber production, and mineral needs.

e. Cumulative Impacts. The assessment of cumulative impacts takes into consideration the effects upon an ecosystem of past, present, and reasonably foreseeable future projects. Every application must be considered on its own merits and its impacts on the environment must be assessed in light of historical permitting activity along with anticipated future activities in the area. Although a particular project may constitute a minor impact in itself, the cumulative effect of a large number of such projects could cause a significant impairment of water resources and interfere with the productivity and water quality of existing aquatic ecosystems.

The proposed work will have minimal impacts on fish and wildlife values. Overall, the project will result in minimal environmental impacts and minimal impacts on fish and wildlife values.

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When considering the overall impacts from past, present, and reasonably foreseeable future projects, their cumulative impacts are not considered to be significantly adverse. It is likely we will receive similar projects in the future which will go through a comparable review process.

f. Findings of No Significant Impact. There have been no significant adverse environmental effects identified resulting from the proposed work. The impact of this proposed activity on aspects affecting the quality of the human environment has been evaluated and it is determined that this action does not require an Environmental Impact Statement.

6. Statement of Findings.

a. Coordination. The formal evaluation process began with publication of a 30-day public notice on 16 December 1999. The comment period for the public notice closed on 18 January 2000. A proposed revision was provided by interagency letter, dated 1 May 2000. A second revision was provided by interagency letter, dated 22 August 2000. Copies of the public notice were forwarded to concerned Federal, State, and local agencies, organized groups, individuals and navigation districts. Copies of the interagency notice were forwarded to concerned Federal, State, and local agencies, and organized groups. These entities included the following:

U.S. Fish and Wildlife Service
National Marine Fisheries Service
Environmental Protection Agency
U.S. Coast Guard
Texas Natural Resource Conservation Commission
Texas Parks and Wildlife Department
Texas Historical Commission
Texas Coastal Coordination Council
General Land Office
National Ocean Survey, Atlantic Marine Center
American Waterways Operators
Adjacent Property Owners

b. Response to the Public Notice.

(1) Federal Agencies. The U.S. Fish and Wildlife Service (FWS) submitted a letter, dated 12 January 2000 in response to the public notice, stating that they recommend that the permit not be issued as currently proposed. FWS indicated that the applicant had not investigated less damaging practicable alternatives to the project, and questioned the value of the applicant's original proposed mitigation, which consisted of placing several acres of a nearby area into a conservation easement. FWS submitted a second letter, dated

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17 May 2000, in response to the first interagency notice, stating that the applicant's revised plan had not adequately addressed their previous comments. FWS submitted a third letter, dated 28 August 2000, in response to the second interagency notice, stating that no adverse effects on fish and wildlife, their habitats, and human uses thereof, are expected to result from the proposed work activity, and therefore, from the standpoint of fish and wildlife and their habitat, FWS has no objection to the issuance of the permit.

The National Marine Fisheries Service (NMFS) submitted three letters, dated 10 January 2000, 5 May 2000, and 29 August 2000, all stating that the resources affected are not ones for which they are responsible and therefore they have no comment regarding issuance of the permit.

No response was received from the U.S. Environmental Protection Agency.

(2) State and Local Agencies. The Texas Parks and Wildlife Department TPWD submitted a letter, dated 27 January 2000, in response to the public notice, stating that the applicant had not taken adequate steps to minimize the impacts of the project and that the original proposed compensation was inadequate and inappropriate. TPWD submitted a second letter, dated 26 May 2000, in response to the first interagency notice, objecting to the applicant's proposed use of the wetlands when unused uplands were available on the same tract, and questioning the applicant's estimates of total acres impacted. TPWD submitted a third letter, dated 30 August 2000, in response to the second interagency notice, stating that the applicant has engaged in negotiations with the resource agencies resulting in plans that minimize and mitigate impacts to fish and wildlife resources.

The Texas Coastal Coordination Council (CCC) submitted three letters, dated 27 December 2000, 8 May 2000, and 25 August 2000, stating that the project was being reviewed by the CCC for consistency with the Texas Coastal Management Program (CMP). The CCC submitted a letter, dated 2 October 2000, in response to the final interagency coordination letter, stating that it has been determined that there are no significant unresolved consistency issues with respect to the project, therefore the project is consistent with the Coastal Management Program goals and policies.

The Texas State Soil and Water Conservation Board submitted a letter, dated 14 January 2000, offering no comments on the project.

The Texas Natural Resource Conservation Commission submitted a letter, dated 21 January 2000, stating that appropriate and practicable compensatory mitigation for all unavoidable adverse impacts must be provided before certification could be considered.

The Orange County Drainage District submitted a letter, dated 24 January 2000, objecting to the original proposal because it would conflict with their construction plans for improvements to the Tiger Creek watershed system. Orange County Drainage District