

Mr. Henry R. Stevenson, Jr.  
Parkwood Land Co.  
Docket No. CWA-06-2011-2709

**Complainant's Prehearing Exchange**  
Exhibits 1-39

Attorney: Russell W. Murdock



specifically Section 404. Ms. Aldridge is responsible for Public Notice Reviews under Section 404 of the CWA, compliance with United States Army Corps of Engineers (USACE) Section 404 permits, and the investigation of alleged unauthorized activities of Section 404. In this capacity, she performed a site investigation on the Respondent's property on December 9, 2010, in collaboration with Ms. Shivers, the USACE Regulatory Specialist. Thus, Ms. Aldridge may testify as to what she observed at the Respondent's property when she conducted her investigation, including the unauthorized discharge of dredged and/or fill material into waters of the United States, and how the Respondent violated Section 404 of the CWA. She may testify as to her communications with the Respondent regarding the violation. Ms. Aldridge took photographs of the property during the investigation. She can authenticate the photographs and testify as to what the photographs depict.

2. John Davidson - Mr. Davidson is the Team Lead employed in the Compliance Section of the Regulatory Branch in the Galveston District of the United States Army Corps of Engineers (USACE), in Galveston, Texas. Mr. Davidson has over 21 years of experience within the Regulatory Branch and is responsible for Section 404 of the CWA and Section 10 of the Rivers and Harbors Act jurisdictional determinations, compliance with USACE permits, and the investigation of alleged unauthorized activities of Section 10 and/or Section 404. In this capacity, he performed site investigations on the Respondent's property on September 3, 2009 and July 22, 2010. Thus, Mr. Davidson may testify as to what he observed at the Respondent's property when he conducted his investigations, including the unauthorized discharge of dredged and/or fill material into waters of the United States, and how the Respondent violated Section 404 of the CWA. He may testify as to his communications with the Respondent regarding the

violation. Mr. Davidson also took wetland sample points on the property and mapped the fill/wetland line near Interstate Highway 10 using a GPS during the investigations. He can authenticate the data and testify as to what the data depicts.

3. Kristin Shivers - Ms. Shivers is a Regulatory Specialist employed in the Compliance Section of the Regulatory Branch in the Galveston District of the United States Army Corps of Engineers (USACE), Galveston, Texas. Ms. Shivers has over four years of experience within the Regulatory Branch and is responsible for Section 404 of the CWA and Section 10 of the Rivers and Harbors Act jurisdictional determinations, compliance with USACE permits, and the investigation of alleged unauthorized activities of Section 10 and/or Section 404. In this capacity, she performed site investigations on the Respondent's property on September 3, 2009, July 22, 2010, and December 9, 2010. Thus, Ms. Shivers may testify as to what she observed at the Respondent's property when she conducted her investigations, including the unauthorized discharge of dredged and/or fill material into waters of the United States, and how the Respondent violated Section 404 of the CWA. She may testify as to her communications with the Respondent regarding the violation. Ms. Shivers also took wetland sample points and photographs of the property during the investigations. She can authenticate the data and photographs and testify as to what these photographs depict.

4. Custodians of Records - EPA personnel may be called to establish the foundation for certain exhibits and the absence or receipt of certain records.

5. Any witness named by Respondent.

6. Any rebuttal witness, as required.

Although Complainant does not anticipate the need to call any additional witness,

Complainant respectfully reserves the right to amend or supplement the witness list and to expand or otherwise modify the scope and extent of testimony of any of these potential witnesses, where appropriate, and upon adequate notice to Respondent and notice and order of this Court.

Complainant's witnesses will not need an interpreter in order to testify.

Special accommodations under the Americans with Disabilities Act will not be needed for counsel, or any witness or party representative.

**B. EXHIBITS:**

The Complainant may offer into evidence the following exhibits:

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
Complainant's Ex. 1	Administrative Complaint dated July 18, 2011
Complainant's Ex. 2	Administrative Order dated January 31, 2011
Complainant's Ex. 3	Warranty Deed for the Property
Complainant's Ex. 4	Respondent's Answer to Administrative Complaint
Complainant's Ex. 5	Barbara Aldridge's Trip Report/Memo to the File following December 9, 2010 Inspection.
Complainant's Ex. 6	Barbara Aldridge's Wetlands Field Inspection Report Form and Map of Property
Complainant's Ex. 7	Photos of Site from December 9, 2010 Inspection: Map Point A; Beginning of fill at southwest corner of site
Complainant's Ex. 8	Photos of Site from December 9, 2010 Inspection: Map Point B; Fill Adjacent to wetlands
Complainant's Ex. 9	Photos of Site from December 9, 2010 Inspection: Map Point C; Edge of levee fill looking east

Complainant's Ex. 10	Photos of Site from December 9, 2010 Inspection: Map Point D; Cypress, Cattail, Standing water
Complainant's Ex. 11	Photos of Site from December 9, 2010 Inspection: Map Point E; River between levee and small island
Complainant's Ex. 12	Photos of Site from December 9, 2010 Inspection: Map Point F; Panorama panning right to left; Second fill area in the left side of the final two photographs
Complainant's Ex. 13	Photos of Site from December 9, 2010 Inspection: Map Point G; Wet area on left; looking back toward I-10 bridge
Complainant's Ex. 14	Photos of Site from December 9, 2010 Inspection: Map Point G; Looking from levee into wet area
Complainant's Ex. 15	Photos of Site from December 9, 2010 Inspection: Map Point H; Southern edge of turnaround; note fill material
Complainant's Ex. 16	Photos of Site from December 9, 2010 Inspection: Map Point I; Truck turnaround area; note tracks & fill/debris
Complainant's Ex. 17	Photos of Site from December 9, 2010 Inspection: Map Point J; River Side looking upriver
Complainant's Ex. 18	Photos of Site from December 9, 2010 Inspection: Map Point J; Looking back at I-10 bridge towards Beaumont
Complainant's Ex. 19	Photos of Site from December 9, 2010 Inspection: Map Point K; Looking back south at turnaround area in mid-distance
Complainant's Ex. 20	Photos of Site from December 9, 2010 Inspection: Map Point L; Wet area near north end of site
Complainant's Ex. 21	Photos of Site from December 9, 2010 Inspection: Map Point L; River side looking upriver; note crushed culvert pipe
Complainant's Ex. 22	Photos of Site from December 9, 2010 Inspection: Map Point M; Remnant trees/island on the River side of levee
Complainant's Ex. 23	Photos of Site from December 9, 2010 Inspection: Map

- Point N; On the north edge of site looking at river
- Complainant's Ex. 24      Photos of Site from December 9, 2010 Inspection: Map Point O; Looking into wet area at the north end of site
- Complainant's Ex. 25      Photos of Site from December 9, 2010 Inspection: Map Point O; Looking upriver on River side of levee at north end of site
- Complainant's Ex. 26      Photos of Site from December 9, 2010 Inspection: Map Point O; Looking south into wet area at the north end of site
- Complainant's Ex. 27      Photos of Site from December 9, 2010 Inspection: Map Point Between J & I; Walking back from the north end, looking back at the edge of the turnaround area
- Complainant's Ex. 28      Photos of Site from December 9, 2010 Inspection: Map Point I; Fill area; note tracks
- Complainant's Ex. 29      Photos of Site from December 9, 2010 Inspection: Map Point I; Fill area without vegetation
- Complainant's Ex. 30      Enforcement Case Referral under Clean Water Act Section 404 from the U.S. Army Corps of Engineers, Galveston District: Introduction
- Complainant's Ex. 31      Enforcement Case Referral under Clean Water Act Section 404 from the U.S. Army Corps of Engineers, Galveston District: Background Information
- Complainant's Ex. 32      Administrative Appeal Decision from the U.S. Army Corps of Engineers, Galveston District, dated December 17, 2007
- Complainant's Ex. 33      Kristin Shivers' Memorandum for File and Supporting Photographs from September 3, 2009 site visit
- Complainant's Ex. 34      Kristin Shivers' Memorandum for File following September 10, 2009 meeting with Respondent
- Complainant's Ex. 35      Kristin Shivers' Memorandums for File and Supporting Photographs from July 22, 2010 site visit

Complainant's Ex. 36	Cease & Desist Order from the U.S. Army Corps of Engineers, Galveston District, dated August 3, 2010
Complainant's Ex. 37	Communications between Respondent and U.S. Army Corps of Engineers, Galveston District, following Cease & Desist Order
Complainant's Ex. 38	Kristin Shivers' Memorandum for File regarding the site's Regulatory History
Complainant's Ex. 39	U.S. Army Corps of Engineers, Galveston District, database results for regulatory history of Respondent

The Complainant respectfully reserves the right to amend its prehearing exchange to add or subtract exhibits and/or documents.

**C. PLACE FOR HEARING AND ESTIMATED TIME NEEDED:**

Pursuant to 40 C.F.R. §§ 22.19(d) and 22.21(d), the Complainant requests that the hearing be held in Dallas, Texas. Complainant estimates two (2) days at most will be needed to present its direct case.

**D. ASSESSMENT OF CIVIL PENALTY:**

STATUTORY FACTORS

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA has the authority to assess against Respondent an administrative civil penalty not to exceed \$32,500 per violation for a Class I penalty and \$157,500 for a Class II penalty. Based upon the facts alleged in the Complaint, and in accordance with the statutory penalty factors enumerated under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), Complainant is seeking a penalty of \$32,500 against Respondent for discharging pollutants into waters of the U.S.

The first four statutory factors deal with the violation itself and consider the "nature,



circumstances, extent and gravity” of the CWA violation. The next four factors involve circumstances surrounding the violator’s act and include the violator’s ability to pay, any prior history of CWA violations, the degree of culpability, and economic benefit (if any) derived from the violation. The final factor considered is “such other matters as justice may require.” 33 U.S.C. § 1319(g)(3).

### PENALTY CALCULATION

The penalty assessed is to promote the goals of fair and equitable treatment among the regulated community and to deter further noncompliance, and follows EPA enforcement guidance for penalty assessment.

Under Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA must consider the **nature, circumstances, extent, and gravity** of the violation. In the case at hand, Respondent discharged a pollutant (dredged and fill material) from a point source into waters of the United States without permit authorization under the Clean Water Act.

During inspections on September 9, 2009, and July 22, 2010, the USACE investigators observed, mapped, and photographed areas of unauthorized fill into jurisdictional waters of the United States. The USACE issued a Cease & Desist Order to the Respondent on August 3, 2010. During a December 9, 2010, inspection, the EPA investigator observed fill material, including dirt, wire, chunks of cement, rebar, and other debris in the wetland area east of the levee. After this inspection, the Complainant issued Respondent an Administrative Order requiring Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States and to submit a plan for the restoration of the 1.26 acres of impacted wetlands. Respondent failed to comply with this Order.

The nature of the violation is such that Respondent discharged pollutants, specifically fill material, to waters of the United States on multiple dates between August 9, 2007 and August 3, 2010. The gravity of the violation includes the actual and potential harm resulting from the unauthorized discharges, especially the risk of environmental harm. The unauthorized fill activity circumvented Section 404 of the CWA permitting process and resulted in avoidable impacts to approximately 1.26 acres of jurisdictional forested wetlands. Specifically, the applicant has precluded the environmental protection process afforded by the EPA's *404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230)* which require that the least environmentally damaging practicable alternative be permitted and that all practicable measures to avoid, minimize, and mitigate impacts have been identified. Prior to the unauthorized activity, the wetlands impacted by this project provided quality habitat for wildlife, performed valuable water quality maintenance functions by removing excess nutrients and pollutants from the water, and provided floodwater storage. The wetland loss in this case contributed to the cumulative amount of acreage of wetlands that have been negatively impacted and detracts from the national and state mandate of achieving a "no net loss" of wetlands in Texas.

Had the Respondent not circumvented the permitting process, the Respondent would have been required to implement measures to avoid and minimize adverse impacts to water quality, hydrology and wetland vegetation. The composition of the fill material used indicates the possibility of pollutants or hazardous substances in the debris fill material which could further adversely impact the wetlands. Compensatory mitigation was not provided for all unavoidable impacts to fully offset all lost wetland functions.

Under Section 309(g)(3) of the CWA, 33 U.S.C. 1319(g)(3), the EPA must also consider the violator's **history of violations** and the **degree of culpability**. Respondent has had a prior history of violations spanning a number of years and a significant degree of culpability. The USACE has documented the Respondent's involvement with the CWA Section 404 application process since 1991, including unauthorized actions taken by the Respondent in 1999, 2001, 2007, and 2008. For these factors, the EPA considered whether the Respondent made good faith efforts to comply with the statute, regulations, and previously issued administrative actions. The EPA also considered if the violations were appropriately corrected, including the degree of effort put forth by Respondent to remedy the violation and to respond to enforcement actions, and how quickly it took to remedy the violations and mitigate any harms before the enforcement action commenced. The EPA does not consider good faith efforts by the violator after an enforcement action has commenced.

In response to an Administrative Order requiring Respondent to immediately cease any discharge of dredged and/or fill material to waters of the U.S. and to submit a plan for the restoration of the 1.26 acres of impacted wetlands, the Respondent failed to cooperate or comply with any of the provisions of the Order, but filed a Notice of Appeal with the U.S. EPA's Environmental Appeals Board ("EAB"). The EAB dismissed the appeal for lack of jurisdiction on April 19, 2011.

Under Section 309(g)(3) of the CWA, 33 U.S.C. 1319(g)(3), EPA must consider the violator's **ability to pay** the civil penalty. Respondent has made no assertion as to its inability to pay the penalty proposed, and EPA has no reason to believe that the proposed penalty will have any detrimental effect on Respondent's business.

Under Section 309(g)(3) of the CWA, 33 U.S.C. 1319(g)(3), EPA must consider the **economic benefit**, if any, resulting from the violation. EPA did consider this particular factor; however, the Agency did not use this factor when calculating the penalty in this matter.

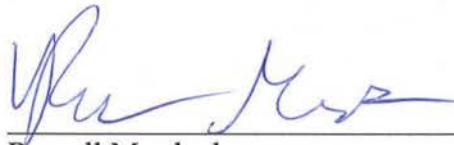
Finally, under Section 309(g)(3) of the CWA, 33 U.S.C. 1319(g)(3), the EPA will consider **such other matters as justice may require**. This catch-all provision can be used to increase or mitigate the penalty. The EPA did consider this factor; however, the Agency did not apply this factor in the calculation of the penalty in this matter.

All of the statutory factors were considered together to determine the total penalty of \$32,500.

#### **E. PAPERWORK REDUCTION ACT APPLICABILITY**

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. §§ 3501 et seq. as amended, does not apply in this case. Also, there is not an Office of Management and Budget Control Number herein and the Provisions of Section 3512 of the PRA are not applicable.

Respectfully submitted,



Russell Murdock  
Assistant Regional Counsel (6RC-EW)  
Office of Regional Counsel  
U.S. EPA, Region 6  
1445 Ross Ave., Ste. 1200  
Dallas, TX 75202-2733  
Murdock.russell@epa.gov  
Tel.: (214) 665-3189  
Fax.: (214) 665-3177

**CERTIFICATE OF SERVICE**

I certify that the original of the foregoing Complainant's Prehearing Exchange was hand-delivered to and filed with the **Regional Hearing Clerk**, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and a true and correct copy was sent to the following on this 9<sup>th</sup> day of January, 2012, in the following manner:

**Via First Class Mail**

Charles (Chuck) Kibler, Jr.  
The Kibler Law Firm  
765 N. 5<sup>th</sup> Street  
Silsbee, TX 77656

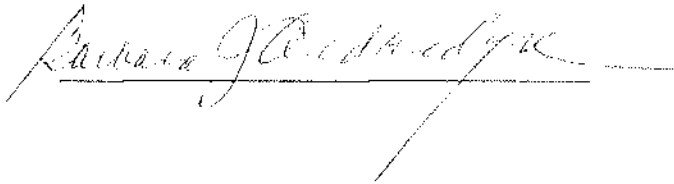
A handwritten signature in cursive script, reading "Barbara J. O'Connell", is written over a horizontal line. The signature is written in dark ink and extends slightly above and below the line.

Exhibit 1

Complainant's Ex. 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

JUL 18 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7008 0150 0003 4922 6388)

Mr. Henry R. Stevenson, Jr.  
Parkwood Land Co.  
2085 Galway Drive  
Vidor, Texas 77662-2951

Re: Administrative Complaint: Docket No. CWA-06-2011-2709

Dear Mr. Stevenson:

Enclosed is an Administrative Complaint (Complaint) issued for violation(s) of Section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), which prohibits the unauthorized discharge of any pollutant into waters of the United States. Section 309, 33 U.S.C. § 1319 of the Act authorizes the Environmental Protection Agency (EPA) to take appropriate enforcement action to ensure compliance with the Act, regulations, and applicable laws.

The enclosed Administrative Complaint which proposes to assess a monetary penalty is issued to Mr. Henry R. Stevenson, Jr. and Parkwood Land Co. (Respondents) for unauthorized fill activities on multiple dates between August 9, 2007, and August 3, 2010, which were carried out in, on, and into approximately 1.26 acres of wetlands located within an approximately 79-acre tract of land located northeast of the Interstate Highway 10 and the Neches River intersection in Orange County, Texas. The potential for issuance of an administrative complaint was addressed in the EPA's letter of January 31, 2011, which transmitted an administrative order to Mr. Henry R. Stevenson, Jr. and Parkwood Land Co.

The respondents have the right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please refer to 40 C.F.R. Part 22, "Consolidated Rules of Practice," for information regarding hearing and settlement procedures.

If you wish to contest the allegations in the Complaint, you must file an Answer within thirty (30) days of receipt of the enclosed Complaint by mailing your Answer to EPA's Regional Hearing Clerk at the following address:

Regional Hearing Clerk (6RC-D)  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733

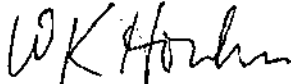
If you do not file an Answer by the applicable deadline, a default order may be issued. If

Complainant's Ex. 1

that occurs, each allegation in the Complaint will be deemed to be admitted as true by you, and you will have waived your right to a hearing on said allegations. The proposed penalty may then be assessed and become due and payable, without further proceedings, thirty (30) days after an Order is issued upon default. Whether or not you request a hearing, we invite you to confer informally with EPA. You have the right to be represented by an attorney, at any stage of the proceedings, including any informal discussions with EPA.

If you have any questions, please contact Ms. Barbara Aldridge of my staff at (214) 665-2712, or the EPA attorney, Mr. Russell Murdock, at (214) 665-3189.

Sincerely yours,



Miguel I. Flores

*see* Director  
Water Quality Protection Division

Enclosures

cc: w/Administrative Complaint  
Regional Hearing Clerk

Charles Kibler, Jr.  
Kibler Law Firm

John Davidson  
Galveston District  
U.S. Army Corps of Engineers



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
2011 JUL 18 AM 7:57  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§	Docket No. CWA-06-2011-2709
	§	
Mr. Henry R. Stevenson, Jr.	§	Proceeding to Assess a
Parkwood Land Co.	§	Civil Penalty Under Section 309(g)
	§	of the Clean Water Act
	§	
Respondents	§	Administrative Complaint

**I. STATUTORY AUTHORITY**

1. This Administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g). The Administrator has delegated the authority to issue this Complaint to the Regional Administrator, EPA Region 6, who has further delegated this authority to the Director of the Water Quality Protection Division, EPA Region 6. This Class I Administrative Complaint is issued in accordance with the Consolidated Rules of Practice, published at 40 C.F.R. Part 22.

2. Based on the following Findings, Complainant finds that Henry R. Stevenson and Parkwood Land Co. ("Respondents") have violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

**II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

3. Parkwood Land Co. is a Texas corporation and therefore considered a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

Complainant's Ex. 1

4. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

5. At all times relevant to the violations alleged herein, Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), provides that whenever, on the basis of any available information, the Administrator finds that a person has violated Section 301 of the Act, 33 U.S.C. § 1311, the EPA is authorized to assess a civil penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).

6. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into waters of the United States.

7. On multiple dates between August 9, 2007, and August 3, 2010, Respondents, and/or other persons or business entities acting at Respondents' direction and/or on Respondents' behalf, discharged pollutants from a point source into waters of the United States without a permit issued under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). More specifically, Respondents, and/or other persons or entities discharged "dredged material" and "fill material," as defined by 40 C.F.R. § 232.2, by means of equipment (e.g., earth-moving equipment) in, on and into approximately 1.26 acres of wetlands located within an approximately 79-acre tract of land located northeast of the Interstate Highway 10 and the Neches River in Orange County, Texas, and referenced in Warranty Deed, instrument number 303215, Tract 3, as filed for record on September 20, 2006, in the Official Public Records of Orange County, Texas, which was adjacent to, hydrologically connected to, and/or has a significant nexus to a

## Complainant's Ex. 1

navigable-in-fact body of water, in this case, the Neches River.

8. The discharged dredged material and fill material are considered "pollutants," within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. Each piece of mechanized equipment used to carry out the discharges is considered a "point source," within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

10. The wetlands identified in paragraph 7 above are "waters of the United States," as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

11. At no time during the period identified in paragraph 7 did Respondents have a permit issued by the U.S. Army Corps of Engineers which authorized the discharge(s) alleged. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

12. The EPA has notified the Texas Commission on Environmental Quality of the issuance of this Complaint and has afforded the State of Texas an opportunity to consult with the EPA regarding the assessment of a civil penalty against Respondents, as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

13. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondents are liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation occurs or continues, up to a maximum of \$37,500.

14. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), the EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, the EPA will consider any comments filed by the public.

**III. PROPOSED PENALTY**

15. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. § § 1319(g)(1) and (g)(2)(A), the EPA, Region 6 finds that Respondents committed the violations alleged above and hereby proposes to assess against Respondents a penalty of thirty-two thousand five-hundred dollars (\$32,500.00).

16. The proposed penalty amount has been determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which include such factors as the nature, circumstances, extent and gravity of the violation(s), any economic benefits, any prior history of such violations, degree of culpability, and such matters as justice may require. The penalty amount proposed in this Paragraph 15 includes a ten percent (10%) adjustment for an anticipated rapid settlement.

**IV. FAILURE TO FILE AN ANSWER**

17. If Respondents wish to admit, deny, or explain any material allegation set forth in the above Findings of Fact and Conclusions of Law or contest the amount of the civil penalty proposed, Respondents must file an Answer to this Complaint within thirty (30) days after Respondents' receipt of the Complaint, regardless of whether Respondents request a hearing on the allegations of the Complaint.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Respondents' failure to file an Answer setting forth any such admission, denial, or explanation shall constitute an admission of all facts alleged, and waive Respondents' right to a hearing, pursuant to 40 C.F.R. § 22.15(d).

19. If Respondents fail to file an Answer within thirty (30) days of service of the

Complainant's Ex. 1

Complaint, Respondents may be found in default whereby a default order may be issued pursuant to 40 C.F.R. § 22.17. Any default shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such allegations.

20. Respondents must send an Answer, including any request for a hearing, and all other pleadings to be filed with the Regional Hearing Clerk to:

Ms. Lorena Vaughn (6RC-D)  
Regional Hearing Clerk  
U. S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Respondents shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Mr. Russell Murdock (6RC-EW)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

21. The Answer must be signed by Respondents' corporate representative or its attorney or other representative, if any, authorized to sign on behalf of Respondents, and include the information required by 40 C. F. R. §§ 22.5 and 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

**V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

22. Respondents may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2). The hearing procedures are set forth at 40 C.F.R. §§ 22.21-26.

Complainant's Ex. 1

23. If a hearing is requested, any person who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at the hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

**VI. SETTLEMENT**

24. The EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, a Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondents may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Ms. Barbara J. Aldridge at (214) 665-2712.

25. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer, pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive a Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and request a hearing on the issues raised in the Complaint. Such petition would be granted and hearing held only if the evidence presented by the petitioner's comments was material and not considered by EPA in the issuance of the CAFO.


26. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondents' continuing obligation to comply with all requirements of the Act, applicable

Complainant's Ex. 1

regulations and permits, and any compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

JUL 18 2011

\_\_\_\_\_  
Issuance date

  
\_\_\_\_\_  
Miguel I. Flores  
Director  
Water Quality Protection Division

**CERTIFICATE OF SERVICE**

I certify that on JUL 18 2011 the original and a true and correct copy of this Complaint were filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of the Complaint were deposited with the U. S. Postal Service addressed to the following persons.

Certified mail, return receipt requested:

Mr. Henry R. Stevenson, Jr.  
Parkwood Land Co.  
2085 Galway Drive  
Vidor, Texas 77662-2951

First-class mail:

Mr. Charles M. Kibler, Jr.  
The Kibler Law Firm  
765 N. 5<sup>th</sup> Street  
Silsbee, Texas 77656

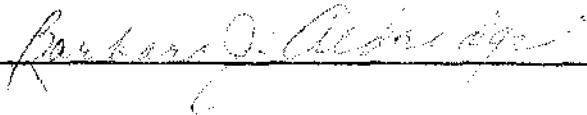
  
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Exhibit 2

Complainant's Ex. 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

JAN 31 2011

Certified Mail - Return Receipt Requested (7003 0500 0003 0870 3949)

Mr. Henry R. Stevenson, Jr.  
Parkwood Land Company  
2085 Galway Drive  
Vidor, Texas 77662-2951

Re: Administrative Order, Docket Number CWA-06-2010-2708

Dear Mr. Stevenson:

Enclosed is an Administrative Order ("Order") issued by the Environmental Protection Agency, Region 6 ("EPA") to Mr. Henry R. "Sonny" Stevenson, Jr. and Parkwood Land Company ("Respondent") citing violations of the Clean Water Act ("Act"), 33 U.S.C. § 1251 et seq., resulting from dredge and fill activities involving wetlands located northeast of the I-10 bridge, located northeast of the Interstate Highway 10 and the Neches River intersection, west of Exit 856, near Rose City, Orange County, Texas, and referenced in Warranty Deed, instrument number 303215, Tract 3, as filed for record on September 20, 2006, in the Official Public Records of Orange County, Texas ("site"). Your compliance with the provisions of this Order is required.

Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of a pollutant from a point source into waters of the United States without permit authorization issued under the Act. Section 309(a) of the Act, 33 U.S.C. § 1319(a), authorizes the EPA to issue administrative orders requiring compliance with the Act and regulations promulgated thereunder.


The EPA has determined that the Respondent violated the Act by discharging pollutants to waters of the U.S. without permit authorization. The enclosed Order requires that Respondent take certain action(s), as specified, to comply with the Act. The EPA is authorized to issue an administrative order pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), including the assessment of a civil penalty, at a later date, for the violations alleged in this Order.

Complainant's Ex. 2

Letter to Mr. Henry R. Stevenson, Jr.  
Pg. 2

If you have any questions, please contact Ms. Barbara Aldridge of my staff at (214) 665-2712. For legal questions, you or your attorney may contact Mr. Russell Murdock of the Office of Regional Counsel at (214) 665-3189.

Sincerely yours,

  
Miguel I. Flores  
Director  
Water Quality Protection Division

Enclosure

cc: John Davidson  
Galveston District Office  
U.S. Army Corps of Engineers

Charles Kibler, Jr.  
The Kibler Law Firm



Complainant's Ex. 2

5. On multiple dates between August 9, 2007 and August 3, 2010, Respondents discharged, caused the discharge, and/or directed the discharge, of "discharge dredged material" and/or "discharge fill material," as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment, in, on and into approximately 1.26 acres of wetlands within the subject property adjacent to the permitted repair of a levee surrounding the wetlands (Army Corps of Engineers Permit No. SWG-2007-01461). The 1.26 acres of wetlands impacted by Respondents' activities are identified on the attached aerial photograph as the red-lined areas. The impacted wetlands are adjacent to, hydrologically connected to, or have a significant nexus to, a navigable-in-fact body of water, in this case, the Nueces River.

6. During site visits on September 3, 2009, and July 22, 2010, Army Corps of Engineers representatives witnessed evidence of the unauthorized mechanized land clearing and filling of the wetlands.

7. Each piece of heavy equipment used during excavation or construction activities which resulted in a discharge acted as a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8. The dredged and fill material discharged was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. At all times relevant to the violations alleged herein, the 1.26 acres of wetlands referred to in paragraph 5, *supra*, were "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

10. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a

## Complainant's Ex. 2

pollutant from a point source to waters of the U.S., except with authorization of and in compliance with a permit issued under the Act.

11. At all times relevant to the violations alleged herein, Section 404 of the Act, 33 U.S.C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters of the U.S.

12. At no time relevant to the discharges alleged in paragraph 5, *supra*, did Respondents have a permit issued by the Army Corps of Engineers which authorized the discharges alleged in paragraph 5.

13. On August 3, 2010, the Army Corps of Engineers issued a Cease & Desist Order to Respondents for the unauthorized discharge of fill material at the subject site (SWG-2007-01461).

14. Each unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

15. Based on these Findings of Fact and Conclusions of Law, the EPA finds that Respondents committed the violations alleged herein.

### III. ORDER

16. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority vested in Section 309(a) of the Act, 33 U.S.C. § 1319(a), the EPA ORDERS Respondents to immediately cease any discharge of dredged and/or fill material to waters of the United States and to:

a. within thirty (30) days of receipt of this Order, submit a plan to the EPA for the restoration of the 1.26 acres of impacted wetlands. The plan should include the

## Complainant's Ex. 2

removal of all unauthorized fill and the planting of replacement wetland vegetation and vegetation on the levee slopes to facilitate erosion control. The plan should be submitted to Ms. Barbara J. Aldridge, EPA Region 6, (6WQ-EM), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Respondents shall commence implementation of the plan within fifteen (15) days following the EPA's approval of the plan. If Respondents fail to submit an acceptable plan or fail to successfully implement a plan upon approval, a restoration plan will be developed by the EPA which Respondents will implement within fifteen (15) days of receipt of the plan, and;

b. Respondents shall, within fifteen (15) days of the receipt of this Order, notify the EPA in writing of its intent to comply with this Order.

### IV. GENERAL PROVISIONS

17. Issuance of this Order shall not be deemed an election by the EPA to forego any administrative action or judicial civil or criminal action to seek penalties, fines, or other relief under the Act for the violations alleged herein, or other violations that become known to the EPA. The EPA reserves the right to seek any remedy available under the law that it deems appropriate.

18. If the EPA issues an administrative complaint, or a civil judicial action is initiated by the United States Department of Justice, Respondents may be ordered to pay a monetary penalty. If a criminal judicial action is initiated by the U.S. Department of Justice, Respondents may be subject to a monetary fine and/or imprisonment.


19. Failure to comply with this Order can result in civil penalties of up to \$37,500 per day of violation.

Complainant's Ex. 2

20. Compliance with the terms and conditions of this Order does not relieve Respondents of their obligation to comply with all applicable local, state, and federal laws.

21. The effective date of this Order is five (5) days after the issued date below.

Issued: 1/31/11

  
Miguel I. Flores  
Director  
Water Quality Protection Division



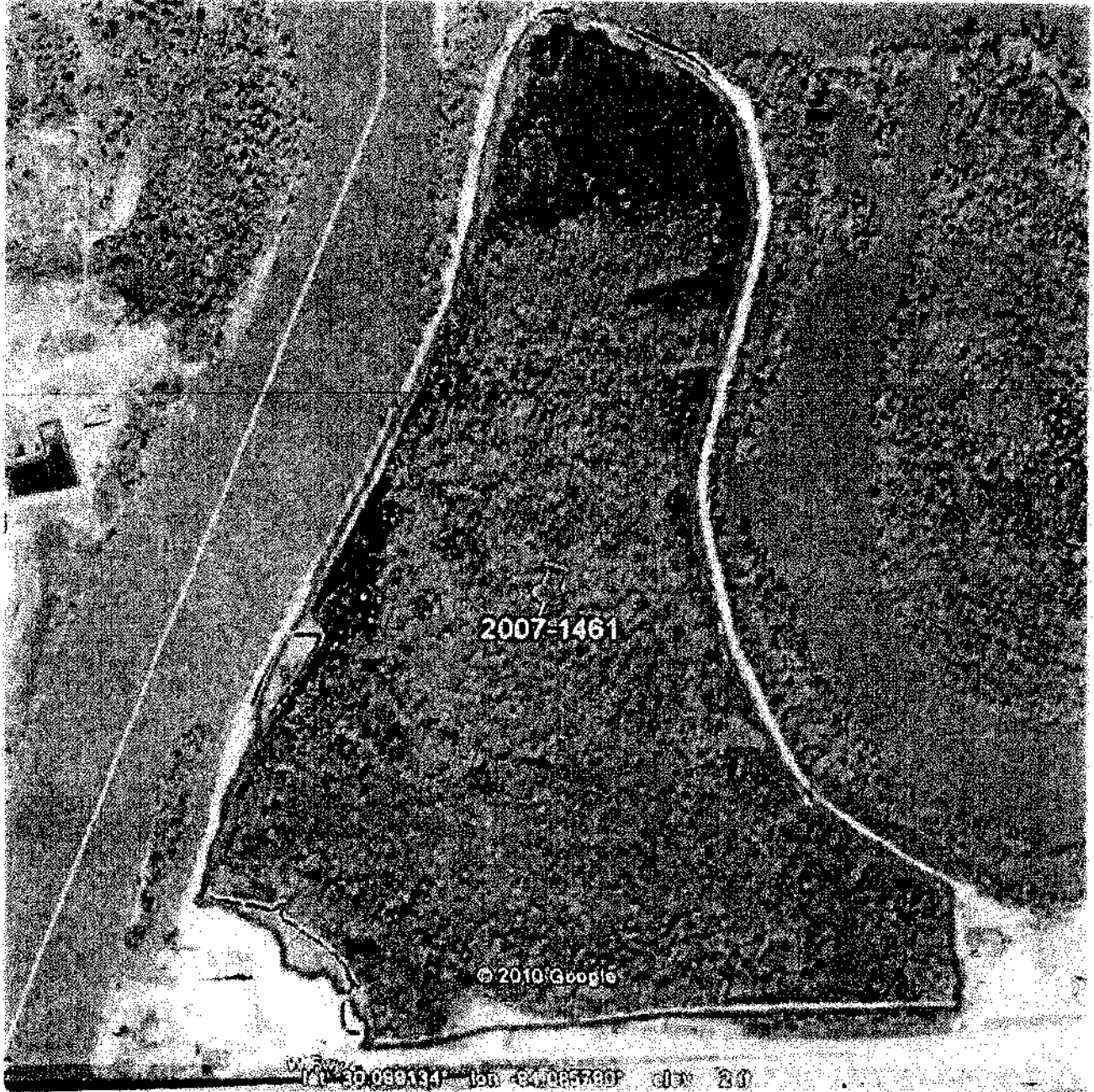


Exhibit 3

LS/05

**303215**

**WARRANTY DEED**

Date: September 19, 2006

GRANTOR: EDWIN ARNAUD, INC., a Texas corporation

GRANTEE: PARKWOOD LAND CO., a Texas corporation

Grantee's Mailing Address (including County):

P. O. Box 5134  
Beaumont TX 77726  
Jefferson County, Texas

Consideration:

Ten Dollars (\$10.00) and other good and valuable consideration.

Property (including any improvements):

Being a 42.036 acre tract or parcel of land (gross area), a portion of that certain tract of land (called Tract C - 42.089 acres) as conveyed by deed to Edwin Arnaud, Inc., recorded in Volume 1473, Page 781 of the Official Public Records of Real Property, County Clerk's Office, Orange County, Texas, said Tract C being further described and referenced to the perimeter map and field note description of lands surveyed for Southwest Realty and Development Company, Inc., prepared by Chas. P. Smith Associates, Inc., dated July 19, 1972 and revised March 13, 1979, as situated in and a part of the Gilbert Stevenson Survey, Abstract No. 167, Orange County, Texas and being more particularly described by metes and bounds as follows;

**BEGINNING** at a point located at the intersection of the South line of Interstate Highway 10 East (Right of Way width varies) with the Easterly line of Old U.S. Highway 90, a 70 feet wide Right of Way as granted by deed from East Beaumont Townsite Company to Orange County, dated June 26, 1924, recorded in Volume 41, Page 337 of the Deed Records of said County and referenced on said perimeter map, this point marks the Northwest corner of said Tract C and the Northwest corner of the herein described tract of land;

**THENCE** North 86 deg. 17 min. 17 sec. East (North 86 deg. 23 min. 05 sec. East - 266.46 feet - deed) along said South Right of Way line with the North line of said Tract C and this tract a distance of 262.47 feet to a concrete monument with disk found marking an angle point for corner and point of curvature of a curve to the left;

*KAREN JO VANCE*  
COUNTY CLERK  
ORANGE COUNTY, TEXAS  
DEPUTY

06 SEP 20 P3:53

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**THENCE** continuing along said South Right of Way line and North line with said curve to the left having a radius of 3964.76 feet, a central angle of 13 deg. 10 min. 17 sec. (13 deg. 08 min. 31 sec. - deed), an arc distance of 911.44 feet (909.40 feet - deed), a chord distance of 909.44 feet (907.39 feet - deed) and a chord bearing of North 79 deg. 47 min. 21 sec. East (North 79 deg. 48 min. 48 sec. East - deed) to a TXDOT concrete monument found (broken) marking an angle point for corner and point of tangency of said curve;

**THENCE** North 73 deg. 17 min. 16 sec. East (North 73 deg. 14 min. 33 sec. East 844.15 feet - deed) continuing along said South Right of Way line and North line a distance of 841.03 feet to a TXDOT concrete monument found marking an angle point for corner and point of curvature of a curve to the left;

**THENCE** continuing along said South Right of Way line and North line with said curve to the left having a radius of 5871.50 feet, a central angle of 07 deg. 33 min. 58 sec. (07 deg. 32 min. 20 sec. - deed), an arc distance of 775.35 feet (772.56 feet - deed), a chord distance of 774.79 feet (772.01 feet - deed) and a chord bearing of North 69 deg. 26 min. 30 sec. East (North 69 deg. 28 min. 24 sec. East - deed) to a 1/2" steel rod with cap marked Arceneaux & Gates set marking an angle point for corner and point of tangency of said curve;

**THENCE** North 65 deg. 43 min. 08 sec. (reference bearing) continuing along said South Right of Way line and North line a distance of 325.54 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set located on the existing easterly bank of Bairds Bayou marking the Northeast corner of said Tract C and the Northeast corner of the herein described tract of land, this point also marks the Northwest corner of a called 1.152 acre tract as conveyed by deed recorded in Volume 1075, Page 806 of said Official Public Records;

**THENCE** along said existing bank of Bairds Bayou and the East line of said Tract C and this tract with the West Line of said 1.152 acre tract and the West line of a called 16.770 acre tract as conveyed by deed recorded in Volume 717, Page 223 of said Official Public Records the following courses and distances to angle points for corners:

South 05 deg. 26 min. 16 sec. East - 36.70 feet  
South 22 deg. 41 min. 02 sec. West - 27.19 feet  
South 48 deg. 35 min. 59 sec. West - 50.23 feet  
South 65 deg. 23 min. 10 sec. East - 11.62 feet  
South 34 deg. 42 min. 32 sec. West - 87.51 feet  
South 28 deg. 11 min. 24 sec. West - 179.32 feet  
South 29 deg. 21 min. 31 sec. West - 71.74 feet  
South 39 deg. 08 min. 03 sec. West - 136.35 feet  
South 31 deg. 50 min. 23 sec. West - 173.12 feet  
South 27 deg. 58 min. 57 sec. West - 116.97 feet  
South 22 deg. 23 min. 18 sec. West - 19.80 feet  
South 22 deg. 52 min. 30 sec. East - 92.36 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set located on the Northerly line of the K. C. S. Railroad Right of Way (called 200 feet wide

Complainant's Ex. 3

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on perimeter field note description and perimeter map) marking the Southwest corner of said 16.770 acre tract, the Southeast corner of said Tract C and the Southeast corner of the herein described tract of land;

**THENCE** South 60 deg. 03 min. 36 sec. West (South 58 deg. 32 min. 33 sec. West - 1636.72 feet - deed) along said Northerly Right of Way line with the Southerly line of said Tract C and this tract a distance of 1654.68 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set located at the intersection of the said East Right of Way line of Old U.S. Highway 90 marking the Southwest corner of said Tract C and the Southwest corner of the herein described tract of land;

**THENCE** along said Easterly Right of Way line with the West line of said Tract C and this tract and a curve to the left having a radius of 837.76 feet (715.55 feet - deed) a central angle of 25 deg. 21 min. 09 sec. (33 deg. 50 min. 00 sec. - deed), an arc distance of 370.70 feet (422.43 feet - deed) a chord distance of 367.68 feet (416.42 feet - deed) and a chord bearing of North 52 deg. 53 min. 45 sec. West (North 53 deg. 03 min. 14 sec. West - deed) to a 1/2" steel rod with cap marked Arceneaux & Gates set marking and angle point for corner and point of tangency of said curve;

**THENCE** North 65 deg. 34 min. 00 sec. West (North 65 deg. 34 min. 04 sec. West - deed) continuing along said Easterly Right of Way line and West line a distance of 146.11 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking an angle point for corner and point of curvature of a curve to the right;

**THENCE** Continuing along said Easterly Right of Way line and West line with said curve to the right having a radius of 767.66 feet, a central angle of 22 deg. 44 min. 54 sec. (21 deg. 27 min. 55 sec. - deed), an arc distance of 304.83 feet (287.63 feet - deed), a chord distance of 302.83 feet (285.95 feet - deed) and a chord bearing of North 53 deg. 55 min. 31 sec. West (North 54 deg. 50 min. 16 sec. West - deed) to a 1/2" steel rod with cap marked Arceneaux & Gates set marking an angle point for corner and point of tangency of said curve;

**THENCE** North 44 deg. 43 min. 38 sec. West (North 45 deg. 07 min. 19 sec. West - 250.24 feet - deed) continuing along said Easterly Right of Way line and West line a distance of 250.24 feet to an angle point for corner and point of curvature of a curve to the left;

**THENCE** continuing along said Easterly Right of Way line and West line with the said curve to the left having a radius of 1550.03 feet, a central angle of 12 deg. 33 min. 57 sec. (13 deg. 13 min. 52 sec. - deed), an arc distance of 339.94 feet (357.94 feet - deed), a chord distance of 339.26 feet (357.15 feet - deed) and a chord bearing of North 52 deg. 44 min. 02 sec. West (North 51 deg. 44 min. 18 sec. West - deed) to the Northwest corner and **PLACE OF BEGINNING** and containing a gross area 42.036 acres of land, more or less, with 8.142 acres, more or less located within said Bairds Bayou being more particularly described by metes and bounds as follows;

**FOR LOCATIVE PURPOSES**, commence at the Northwest corner of the above described 42.036 acre tract of land;

Complainant's Ex. 3

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**THENCE** North 86 deg. 17 min. 17 sec. East along the South line of said I-H 10 East Right of Way with the North line of said 42.036 acre tract a distance of 81.83 feet to a point located on the most Westerly bank of said Bairds Bayou marking the most Westerly Northwest corner and **PLACE OF BEGINNING** of the herein described tract of land;

**THENCE** North 86 deg. 17 min. 17 sec. East continuing along the said South Right of Way line and North line of said 42.036 acre tract, crossing said Bairds Bayou a distance of 106.53 feet to a point located on the most Westerly East bank of said Bairds Bayou marking the most Westerly Northeast corner of the herein described tract of land;

**THENCE** along the existing bank of Bairds Bayou the following courses and distances to angle points for corners:

1. South 38 deg. 13 min. 15 sec. East 30.36 feet;
2. South 09 deg. 54 min. 59 sec. East 64.44 feet;
3. South 40 deg. 07 min. 54 sec. East 71.74 feet;
4. South 53 deg. 41 min. 35 sec. East 89.51 feet;
5. South 76 deg. 23 min. 28 sec. East 40.60 feet;
6. South 42 deg. 24 min. 31 sec. East 95.98 feet;
7. South 44 deg. 05 min. 14 sec. East 108.10 feet;
8. South 48 deg. 42 min. 34 sec. East 114.87 feet;
9. South 62 deg. 08 min. 58 sec. East 97.62 feet;
10. South 71 deg. 34 min. 18 sec. East 101.37 feet;
11. South 72 deg. 51 min. 14 sec. East 104.52 feet;
12. South 79 deg. 19 min. 30 sec. East 109.79 feet;
13. South 73 deg. 37 min. 00 sec. East 65.54 feet;
14. North 82 deg. 52 min. 40 sec. East 84.50 feet;
15. North 86 deg. 16 min. 12 sec. East 56.84 feet;
16. North 76 deg. 09 min. 52 sec. East 131.43 feet;
17. North 87 deg. 44 min. 25 sec. East 46.89 feet;
18. North 59 deg. 45 min. 12 sec. East 51.38 feet;
19. North 66 deg. 19 min. 57 sec. East 175.01 feet;
20. South 55 deg. 18 min. 55 sec. East 19.49 feet;
21. North 65 deg. 40 min. 02 sec. East 56.83 feet;
22. North 34 deg. 37 min. 18 sec. East 53.17 feet;
23. North 57 deg. 41 min. 44 sec. East 423.78 feet;
24. North 68 deg. 06 min. 23 sec. East 98.33 feet;
25. North 37 deg. 28 min. 17 SEC. East 59.79 feet
26. North 38 deg. 07 min. 34 sec. East 141.79 feet;
27. North 63 deg. 26 min. 38 sec. East 48.24 feet;
28. North 73 deg. 40 min. 12 sec. East 37.26 feet;
29. North 19 deg. 28 min. 55 sec. East 112.76 feet;
30. North 64 deg. 32 min. 43 sec. East 28.68 feet;
31. North 35 deg. 27 min. 54 sec. East 222.07 feet;
32. North 36 deg. 52 min. 50 sec. East 215.72 feet;

Complainant's Ex. 3

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33. North 29 deg. 18 min. 52 sec. East 109.55 feet;

34. North 32 deg. 37 min. 02 sec. East 69.51 feet to a point located on the South line of I-H 10 East and North line of said 42.036 acre tract marking the most Easterly Northwest corner of the herein described tract of land;

**THENCE** North 65 deg. 43 min. 08 sec. East along said South Right of Way line and North line, crossing said Bairds Bayou a distance of 265.38 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set located on the existing easterly bank of Bairds Bayou marking the Northeast corner of said 42.036 acre tract and the most Easterly Northeast corner of the herein described tract of land, this point also marks the Northwest corner of a called 1.152 acre tract as conveyed by deed recorded in Volume 1075, Page 806 of said Official Public Records;

**THENCE** along said existing bank of Bairds Bayou and the East line of said 42.036 acre tract and this tract with the West Line of said 1.152 acre tract and the West line of a called 16.770 acre tract as conveyed by deed recorded in Volume 717, Page 223 of said Official Public Records the following courses and distances to angle points for corners:

1. South 05 deg. 26 min. 16 sec. East - 36.70 feet
2. South 22 deg. 41 min. 02 sec. West - 27.19 feet
3. South 48 deg. 35 min. 59 sec. West - 50.23 feet
4. South 65 deg. 23 min. 10 sec. East - 11.62 feet
5. South 34 deg. 42 min. 32 sec. West - 87.51 feet
6. South 28 deg. 11 min. 24 sec. West - 179.32 feet
7. South 29 deg. 21 min. 31 sec. West - 71.74 feet
8. South 39 deg. 08 min. 03 sec. West - 136.35 feet
9. South 31 deg. 50 min. 23 sec. West - 173.12 feet
10. South 27 deg. 58 min. 57 sec. West - 116.97 feet
11. South 22 deg. 23 min. 18 sec. West - 19.80 feet
12. South 22 deg. 52 min. 30 sec. East - 92.36 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set located on the Northerly line of the K. C. S. Railroad Right of Way (called 200 feet wide on perimeter field note description and perimeter map) marking the Southwest corner of said 16.770 acre tract, the Southeast corner of said 42.036 acre tract and the most Easterly Southeast corner of the herein described tract of land;

**THENCE** South 60 deg. 03 min. 36 sec. West along the South line of said 42.036 acre tract, crossing said Bairds Bayou a distance of 118.71 feet to a point located on the Westerly Bank of the Easterly side of an Oxbow Island on said Bayou marking the most Easterly Southwest corner of the herein described tract of land;

**THENCE** along said Oxbow Island the following courses and distances to angle points for corners:

1. North 27 deg. 20 min. 08 sec. West 70.51 feet;
2. North 86 deg. 18 min. 37 sec. West 19.15 feet;
3. South 66 deg. 52 min. 53 sec. West 64.35 feet;
4. South 39 deg. 43 min. 32 sec. West 99.36 feet;
5. South 37 deg. 38 min. 46 sec. West 64.60 feet;

Complainant's Ex. 3

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6. South 06 deg. 23 min. 23 sec. East 32.21 feet to a point located on the South line of said 42.036 acre tract and Westerly side of said Oxbow Island marking the most Westerly Southeast corner of the herein described tract of land;

**THENCE** South 60 deg. 03 min. 36 sec. West along the South line of said 42.036 acre tract, crossing said Bayou a distance of 185.53 feet to a point located on the Southwesterly bank of said Bayou marking the most Westerly Southwest corner of the herein described tract of land;

**THENCE** along said Southwesterly bank the following courses and distances to angle points for corners:

1. North 71 deg. 05 min. 53 sec. West 36.52 feet;
2. South 63 deg. 51 min. 13 sec. West 87.28 feet;
3. South 59 deg. 36 min. 40 sec. West 100.75 feet;
4. South 64 deg. 43 min. 00 sec West 174.93 feet;
5. South 60 deg. 20 min. 47 sec. West 100.67 feet;
6. North 85 deg. 08 min. 20 sec. West 48.95 feet;
7. South 67 deg. 00 min. 24 sec. West 103.48 feet;
8. South 82 deg. 07 min. 12 sec. West 38.02 feet;
9. South 71 deg. 34 min 18 sec. West 43.97 feet;
10. South 50 deg. 28 min. 00 sec. West 46.43 feet;
11. South 48 deg. 42 min. 09 sec. West 27.08 feet;
12. South 68 deg. 31 min. 51 sec. West 40.41 feet;
13. North 47 deg. 34 min. 29 sec. West 29.23 feet;
14. South 84 deg. 27 min. 24 sec. West 63.80 feet;
15. South 60 deg. 39 min. 06 sec. West 22.63 feet;
16. South 69 deg. 03 min. 06 sec. West 62.05 feet;
17. North 78 deg. 41 min. 39 sec. West 37.72 feet;
18. North 73 deg. 49 min. 01 sec. West 39.80 feet;
19. North 80 deg. 32 min. 29 sec. West 45.00 feet;
20. North 68 deg. 41 min. 23 sec. West 27.13 feet;
21. North 87 deg. 13 min. 51 sec. West 38.27 feet;
22. North 75 deg. 39 min. 04 sec. West 80.82 feet;
23. South 88 deg. 09 min. 10 sec. West 19.12 feet;
24. North 30 deg. 20 min. 00 sec. West 37.84 feet;
25. North 72 deg. 54 min. 12 sec. West 16.77 feet;
- 26 South 89 deg. 08 min. 42 sec. West 41.31 feet;
27. North 88 deg. 40 min. 05 sec. West 26.52 feet
28. South 53 deg. 45 min. 24 sec. West 22.93 feet;
29. North 66 deg. 17 min. 16 sec. West 44.44 feet;
30. North 69 deg. 57 min. 43 sec. West 48.56 feet;
31. North 57 deg. 23 min. 27 sec. West 73.19 feet;
32. North 59 deg. 41 min. 10 sec. West 37.85 feet;
33. North 35 deg. 02 min. 48 sec. West 65.49 feet;
34. North 71 deg. 09 min. 49 sec. West 41.04 feet;



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35. North 49 deg. 17 min. 13 sec. West 93.53 feet;  
36. North 48 deg 36 min. 28 sec. West 76.43 feet;  
37. North 52 deg. 57 min. 15 sec. West 37.85 feet;  
38. North 44 deg. 33 min. 27 sec. West 165.19 feet;  
39. North 58 deg. 12 min. 40 sec. West 36.26 feet;  
40. North 31 deg. 07 min. 56 sec. West 76.31 feet;  
41. North 63 deg. 48 min. 31 sec. West 43.28 feet;  
42. North 35 deg. 45 min. 23 sec. West 47.44 feet to the most Westerly Northwest corner and **PLACE OF BEGINNING** and containing 8.142 acres of land, leaving a total net area of 33.894 acres of land, more or less

**TRACT 3**

Being a 96.659 acre tract or parcel of land, a portion of that certain tract of land (called Tract A - 406.657 acres) as conveyed by deed to Edwin Arnaud, Inc., recorded in Volume 1473, Page 781 of the Official Public Records of Real Property, County Clerk's Office, Orange County, Texas, said Tract A being further described and referenced to the perimeter map and field note description of lands surveyed for Southwest Realty and Development Company, Inc., prepared by Chas. P. Smith Associates, Inc., dated July 19, 1972 and revised March 13, 1979, as situated in and a part of the Gilbert Stevenson Survey, Abstract No. 167, Orange County, Texas and being more particularly described by metes and bounds as follows;

**BEGINNING** at a 1/2" steel rod found located on the North Right of Way line of Interstate Highway 10 East (Right of Way width varies) marking the lower Southwest corner of said Tract A and the lower Southwest corner of the herein described tract of land, this point also marks the Southeast corner of that certain tract of land as conveyed by deed to the JAI Family Living Revocable Trust, recorded in Volume 1187, Page 755 of said Official Public Records;

**THENCE** North 01 deg. 35 min. 43 sec. East (North 01 deg. 32 min. 00 sec. East - 301.05 Feet - deed) along the East line of said JAI Family Tract and a lower West line of said Tract A, a distance of 300.67 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking the Northeast corner of said JAI Family Tract and an "E11" corner of said Tract A and the herein described tract of land;

**THENCE** North 88 deg. 28 min. 00 sec. West along the North line of said JAI Family Tract and a Southerly line of said Tract A and this tract a distance of 358.85 feet (353.30 feet - deed) to a point located on the existing Easterly Bank of the Neches River marking the Northwest corner of said JAI Family Trust and the upper Southwest corner of said Tract A and the herein described tract of land;

**THENCE** along the said existing Easterly bank of the Neches River the following courses and distances to angle points for corners:

North 14 deg. 20 min. 15 sec. East - 335.80 feet

Complainant's Ex. 3

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North 18 deg. 05 min. 58 sec. East - 193.26 feet  
North 34 deg. 56 min. 07 sec. East - 212.31 feet  
South 69 deg. 56 min. 06 sec. East - 40.95 feet  
North 33 deg. 36 min. 45 sec. East - 465.48 feet  
North 26 deg. 00 min. 17 sec. East - 337.52 feet  
North 31 deg. 54 min. 48 sec. East - 274.41 feet  
North 23 deg. 59 min. 29 sec. West - 36.88 feet  
North 26 deg. 00 min. 17 sec. East - 98.89 feet  
North 12 deg. 42 min. 53 sec. East - 257.51 feet  
North 06 deg. 09 min. 47 sec. East - 621.12 feet to a point marking the Southwest corner of that certain tract of land called (called 3.0 acres - 1.653 acres by survey) as conveyed by Sheriffs Deed to Orange County, Trustee for the Vidor Independent School District, recorded in Volume 1409, Page 647 of said Official Public Records, this point also marks the lower Northwest corner of the herein described tract of land;

**THENCE** South 84 deg. 46 min. 00 sec. East along the South line of said called 3.0 acre tract a distance of 324.95 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking the Southeast corner of said called 3.0 acre tract and an "ELL" corner of the herein described tract of land;

**THENCE** North 20 deg. 38 min. 27 sec. East along the East line of said called 3.0 acre tract a distance of 160.47 feet to a point located on the existing Southeasterly bank of said Neches River marking the upper Northwest corner of the herein described tract of land;

**THENCE** along the said existing Southeasterly bank the following courses and distances to angle points for corners:

South 71 deg. 55 min. 23 sec. East - 123.89 feet  
South 68 deg. 20 min. 56 sec. East - 183.97 feet  
South 66 deg. 40 min. 09 sec. East - 182.24 feet  
South 80 deg. 03 min. 56 sec. East - 201.79 feet  
South 70 deg. 32 min. 56 sec. East - 138.07 feet  
North 51 deg. 21 min. 04 sec. East - 42.67 feet  
South 70 deg. 02 min. 38 sec. East - 43.31 feet  
North 58 deg. 13 min. 50 sec. East - 174.73 feet  
North 78 deg. 53 min. 45 sec. East - 25.73 feet to a point located on the Westerly bank on the Westerly portion of a Neches River Oxbow;

**THENCE** along the Westerly Bank of said Oxbow the following courses and distances:

1. South 13 deg. 43 min. 49 sec. East 26.00 feet;
2. South 25 deg. 58 min. 59 sec. East 24.60 feet;
3. South 30 deg. 58 min. 24 sec. West 9.92 feet;
4. South 70 deg. 12 min. 29 sec. West 15.07 feet;

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5. South 57 deg. 54 min. 14 sec. West 34.14 feet;
6. South 23 deg. 12 min. 24 sec. West 30.23 feet;
7. South 05 deg. 47 min. 42 sec. West 39.32 feet;
8. South 05 deg. 33 min. 18 sec. East 41.01 feet;
9. South 14 deg. 06 min. 44 sec. West 55.83 feet;
10. South 26 deg. 20 min. 48 sec. West 63.90 feet;
11. South 11 deg. 56 min. 34 sec. West 101.41 feet;
12. South 42 deg. 24 min. 30 sec. West 17.66 feet;
13. North 80 deg. 54 min. 47 sec. West 14.36 feet;
14. North 26 deg. 02 min. 18 sec. West 27.13 feet;
15. North 16 deg. 04 min. 20 sec. West 73.75 feet;
16. North 02 deg. 44 min. 31 sec. East 106.71 feet;
17. North 39 deg. 46 min. 00 sec. West 41.67 feet;
18. North 75 deg. 20 min. 55 sec. West 38.11 feet;
19. North 90 deg. 00 min.00 sec. West 21.55 feet;
20. North 55 deg 01 min. 06 sec. West 13.84 feet;
21. South 30 deg. 58 min. 25 sec. West 19.84 feet;
22. South 00 deg. 31 min. 02 sec. East 19.16 feet;
23. South 14 deg. 02 min. 30 sec. East 56.03 feet;
24. South 34 deg. 17 min. 50 sec. West 45.24 feet;
25. South 11 deg. 53 min. 35 sec. West 65.97 feet;
26. South 03 deg. 30 min. 18 sec. West 83.39 feet;
27. South 25 deg. 07 min. 24 sec. East 60.04 feet;
28. South 19 deg. 26 min. 49 sec. West 61.25 feet;
29. South 11 deg. 18 min. 51 sec. East 60.63 feet;
30. South 10 deg. 47 min. 18 sec. West 36.31 feet;
31. South 09 deg. 11 min. 53 sec. West 17.66 feet;
32. South 83 deg. 50 min. 04 sec. West 43.31 feet;
33. South 22 deg. 26 min. 02 sec. West 57.89 feet;
34. South 23 deg. 39 min. 58 sec. West 194.74 feet;
35. South 18 deg. 04 min. 01 sec. West 328.77 feet;
36. South 78 deg. 24 min. 44 sec. West 67.65 feet;
37. South 42 deg. 26 min. 50 sec. West 40.29 feet;
38. South 08 deg. 58 min. 34 sec. West 98.03 feet;
39. South 13 deg. 30 min. 03 sec. East 43.67 feet;
41. South 45 deg. 00 min. 40 sec. East 93.71 feet;
41. South 38 deg. 40 min. 14 sec. East 97.91 feet;
42. South 31 deg. 12 min. 05 sec. East 164.84 feet;
43. South 15 deg. 53 min. 55 sec. East 127.17 feet;
44. South 19 deg. 31 min. 38 sec. East 134.73 feet;
45. South 27 deg. 29 min. 01 sec. East 143.61 feet;
46. South 42 deg. 27 min. 40 sec. East 148.52 feet;
47. South 59 deg. 21 min. 33 sec. East 106.66 feet;
48. South 62 deg. 31 min. 43 sec. East 142.69 feet;

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49. South 69 deg. 22 min. 51 sec. East 161.60 feet;  
50. South 68 deg. 56 min. 29 sec. East 122.92 feet;  
51. North 79 deg. 24 min. 45 sec. East 106.32 feet;  
52. North 79 deg. 14 min. 46 sec. East 172.97 feet;  
53. North 82 deg. 21 min. 45 sec. East 70.30 feet;  
54. South 18 deg. 55 min. 05 sec. East 96.97 feet;  
55. South 26 deg. 34 min. 26 sec. East 51.28 feet;  
56. South 27 deg. 56 min. 51 sec. East 73.90 feet to a point located at the intersection of said River Oxbow with the Southerly bank of the Westerly portion of Bairds Bayou, this point also marks an angle point for corner on the North line of that certain tract of land (called 20 acres) as conveyed by deed to Bo-Mac Contractors, Inc., recorded in Volume 669, Page 418 of said Official Public Records;

**THENCE** along the existing Southwesterly bank line of the said Westerly portion of Bairds Bayou and Northerly line of said 20 acre tract the following courses and distances to angle points for corners:

South 89 deg. 06 min. 36 sec. West - 217.80 feet  
South 86 deg. 00 min. 14 sec. West - 198.40 feet  
North 79 deg. 06 min. 45 sec. West - 168.93 feet  
North 69 deg. 42 min. 30 sec. West - 133.01 feet  
North 61 deg. 20 min. 13 sec. West - 122.08 feet  
North 54 deg. 52 min. 04 sec. West - 382.68 feet  
North 35 deg. 45 min. 23 sec. West - 59.58 feet to a point marking the most Northerly corner of said 20 acre tract and an interior "ELL" corner of the herein described tract of land;

**THENCE** South 55 deg. 54 min. 22 sec. West, departing said Bairds Bayou along the Northwesterly line of said 20 acre tract a distance of 362.17 feet to a point marking the Northwest corner of said 20 acre tract and an angle point for corner of the herein described tract of land;

**THENCE** South 00 deg. 13 min. 09 sec. West (South 00 deg. 12 min. 52 sec. West - 500.00 feet - deed) along the West line of said 20 acre tract a distance of 500.51 feet to a 3/4" steel rod found located on the said North Right of Way line of Interstate Highway 10 East marking the Southwest corner of said 20 acre tract and an "ELL" corner of the herein described tract of land;

**THENCE** North 77 deg. 49 min. 41 sec. West (North 78 deg. 02 min. 06 sec. West - deed) along said North Right of Way line a distance of 129.90 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking an angle point for corner;

**THENCE** South 82 deg. 01 min. 42 sec. West (reference bearing) continuing along said North Right of Way line a distance of 420.27 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking an angle point for corner;

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**THENCE** North 89 deg. 44 min. 08 sec. West (North 89 deg. 45 min. 47 sec. West - deed) continuing along said North Right of Way line a distance of 806.72 feet to the lower Southwest corner and **PLACE OF BEGINNING** and containing 96.659 acres of land, more or less.

**TRACT 4**

Being a 0.377 acre tract or parcel of land, same being an Island located on the Westerly side of a Neches River Oxbow and being a portion of that certain tract of land (called Tract A - 406.657 acres) as conveyed by deed to Edwin Arnaud, Inc., recorded in Volume 1473, Page 781 of the Official Public Records of Real Property, County Clerk's Office, Orange County, Texas, said Tract A being further described and referenced to the perimeter map and field note description of lands surveyed for Southwest Realty and Development Company, Inc., prepared by Chas. P. Smith Associates, Inc., dated July 19, 1972 and revised March 13, 1979, as situated in and a part of the Gilbert Stevenson Survey, Abstract No. 167, Orange County, Texas and being more particularly described by metes and bounds as follows;

**FOR LOCATIVE PURPOSES**, commence at a 1/2" steel rod found located on the North Right of Way line of Interstate Highway 10 East (Right of Way width varies) marking the lower Southwest corner of said Tract A, this point also marks the Southeast corner of that certain tract of land as conveyed by deed to the JAI Family Living Revocable Trust, recorded in Volume 1187, Page 755 of said Official Public Records;

**THENCE** North 01 deg. 35 min. 43 sec. East (North 01 deg. 32 min. 00 sec. East - 301.05 feet - deed) along the East line of said JAI Family Tract and a lower West line of said Tract A, a distance of 300.67 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking the Northeast corner of said JAI Family Tract and an "EII" corner of said Tract A;

**THENCE** North 88 deg. 28 min. 00 sec. West along the North line of said JAI Family Tract and a Southerly line of said Tract A, a distance of 358.85 feet (353.30 feet - deed) to a point located on the existing Easterly Bank of the Neches River marking the Northwest corner of said JAI Family Trust and the upper Southwest corner of said Tract A;

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**THENCE** along the said existing Easterly bank of the Neches River the following courses and distances to angle point for corners:

North 14 deg. 20 min. 15 sec. East - 335.80 feet  
North 18 deg. 05 min. 58 sec. East - 193.26 feet  
North 34 deg. 56 min. 07 sec. East - 212.31 feet  
South 69 deg. 56 min. 06 sec. East - 40.95 feet  
North 33 deg. 36 min. 45 sec. East - 465.48 feet  
North 26 deg. 00 min. 17 sec. East - 337.52 feet  
North 31 deg. 54 min. 48 sec. East - 274.41 feet  
North 23 deg. 59 min. 29 sec. West - 36.88 feet  
North 26 deg. 00 min. 17 sec. East - 98.89 feet  
North 12 deg. 42 min. 53 sec. East - 257.51 feet  
North 06 deg. 09 min. 47 sec. East - 621.12 feet to a point marking the Southwest corner of that certain tract of land called (called 3.0 acres - 1.653 acres by survey) as conveyed by Sheriffs Deed to Orange County, Trustee for the Vidor Independent School District, recorded in Volume 1409, Page 647 of said Official Public Records;

**THENCE** South 84 deg. 46 min. 00 sec. East along the South line of said called 3.0 acre tract a distance of 324.95 feet to a 1/2" steel rod with cap marked Arceneaux & Gates set marking the Southeast corner of said called 3.0 acre tract;

**THENCE** North 20 deg. 38 min. 27 sec. East along the East line of said called 3.0 acre tract a distance of 160.47 feet to a point located on the existing Southeasterly bank of said Neches River;

**THENCE** along the said existing Southeasterly bank the following courses and distances to angle points for corners:

South 71 deg. 55 min. 23 sec. East - 123.89 feet  
South 68 deg. 20 min. 56 sec. East - 183.97 feet  
South 66 deg. 40 min. 09 sec. East - 182.24 feet  
South 80 deg. 03 min. 56 sec. East - 201.79 feet  
South 70 deg. 32 min. 56 sec. East - 138.07 feet  
North 51 deg. 21 min. 04 sec. East - 42.67 feet  
South 70 deg. 02 min. 38 sec. East - 43.31 feet  
North 58 deg. 13 min. 50 sec. East - 174.73 feet  
North 78 deg. 53 min. 45 sec. East - 25.73 feet to a point located on the Westerly bank on the Westerly portion of a Neches River Oxbow;

**THENCE** along the Westerly Bank of said Oxbow the following courses and distances:

1. South 13 deg. 43 min. 49 sec. East 26.00 feet;
2. South 25 deg. 58 min. 59 sec. East 24.60 feet;
3. South 30 deg. 58 min. 24 sec. West 9.92 feet;
4. South 70 deg. 12 min. 29 sec. West 15.07 feet;
5. South 57 deg. 54 min. 14 sec. West 34.14 feet;

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6. South 23 deg. 12 min. 24 sec. West 30.23 feet;
7. South 05 deg. 47 min. 42 sec. West 39.32 feet;
8. South 05 deg. 33 min. 18 sec. East 41.01 feet;
9. South 14 deg. 06 min. 44 sec. West 55.83 feet;
10. South 26 deg. 20 min. 48 sec. West 63.90 feet;
11. South 11 deg. 56 min. 34 sec. West 101.41 feet;
12. South 42 deg. 24 min. 30 sec. West 17.66 feet;
13. North 80 deg. 54 min. 47 sec. West 14.36 feet;
14. North 26 deg. 02 min. 18 sec. West 27.13 feet;
15. North 16 deg. 04 min. 20 sec. West 73.75 feet;
16. North 02 deg. 44 min. 31 sec. East 106.71 feet;
17. North 39 deg. 46 min. 00 sec. West 41.67 feet;
18. North 75 deg. 20 min. 55 sec. West 38.11 feet;
19. North 90 deg. 00 min. 00 sec. West 21.55 feet;
20. North 55 deg. 01 min. 06 sec. West 13.84 feet;
21. South 30 deg. 58 min. 25 sec. West 19.84 feet;
22. South 00 deg. 31 min. 02 sec. East 19.16 feet;
23. South 14 deg. 02 min. 30 sec. East 56.03 feet;
24. South 34 deg. 17 min. 50 sec. West 45.24 feet;
25. South 11 deg. 53 min. 35 sec. West 65.97 feet;
26. South 03 deg. 30 min. 18 sec. West 83.39 feet;
27. South 25 deg. 07 min. 24 sec. East 60.04 feet;
28. South 19 deg. 26 min. 49 sec. West 61.25 feet;
29. South 11 deg. 18 min. 51 sec. East 60.63 feet;

**THENCE** North 69 deg. 26 min. 06 sec. East, departing said Westerly bank, crossing said Westerly Oxbow a distance of 50.46 to a point on the existing bank of said Island marking the **PLACE OF BEGINNING** of the herein described tract of land;

**THENCE** along the existing bank of said Island the following courses and distances to angle points for corners:

1. North 90 deg. 00 min. 00 sec. East 11.53 feet;
2. South 51 deg. 07 min. 35 sec. East 30.61 feet;
3. South 47 deg. 18 min. 06 sec. East 40.79 feet;
4. South 03 deg. 34 min. 40 sec. East 24.64 feet;
5. South 34 deg. 42 min. 20 sec. East 24.30 feet;
6. South 24 deg. 58 min. 17 sec. West 49.16 feet;
7. South 29 deg. 09 min. 27 sec. West 45.75 feet;
8. South 25 deg. 38 min. 59 sec. West 42.62 feet;
9. South 71 deg. 57 min. 16 sec. West 27.29 feet;
10. North 17 deg. 46 min. 16 sec. West 41.56 feet;
11. North 06 deg. 05 min. 05 sec. West 47.14 feet;
12. North 23 deg. 12 min. 24 sec. West 43.89 feet;
13. North 01 deg. 32 min. 56 sec. East 42.66 feet;

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- 14. North 84 deg. 17 min. 29 sec. East 7.73 feet;
- 15. North 69 deg. 27 min. 05 sec. East 19.70 feet;
- 16. North 10 deg. 26 min. 30 sec. East 29.69 feet;
- 17. North 28 deg. 39 min. 59 sec. East 18.83 feet to the **PLACE OF BEGINNING** and containing 0.377 acres of land, more or less.

SAVE AND EXCEPT THEREFROM all of the oil, gas and other minerals, in, on and under the above described property.

Reservations from and Exceptions to Conveyance and Warranty:

All restrictions, reservations and easements of record affecting said property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

EDWIN ARNAUD, INC.

BY *Edwin Arnaud*  
Edwin Arnaud, III, President

THE STATE OF TEXAS §  
COUNTY OF ORANGE §

This instrument was acknowledged before me this 19 day of September, 2006, by EDWIN ARNAUD, III, President of EDWIN ARNAUD, INC., a Texas corporation, on behalf of said corporation

*[Signature]*  
Notary Public, State of Texas

FB STC  
After Recording Return To:  
Parkwood Land Company  
P. O. Box 5134  
Beaumont TX 77726

(14) 5700 + 1100

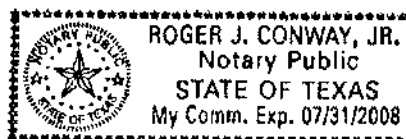




Exhibit 4

Complainant's Ex. 4

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

In the Matter of	§	Docket No. CWA-06-2011-2709
	§	
Mr. Henry R. Stevenson, Jr. Parkwood Land Co.	§	Proceeding to Assess a Civil Penalty Under Section 309(g) of the Clean Water Act
	§	
Respondents	§	Administrative Complaint

RESPONDENT'S ORIGINAL ANSWER

I. General Denial

1. Respondent denies each and every allegation of Petitioner's complaint and demands strict proof thereof.
2. Respondent further specifically denies that Petitioner has jurisdiction under the Clean Water Act (hereinafter "the Act") as Petitioner cannot demonstrate a hydrological connection or significant nexus between the subject property and a relatively permanent body of water connected to traditional interstate navigable waters.
3. Respondent further specifically denies that Petitioner has jurisdiction as the property has been isolated from any relatively permanent body of water connected to traditional interstate navigable waters by a levee system which pre-dates the Act and is therefore "grandfathered."

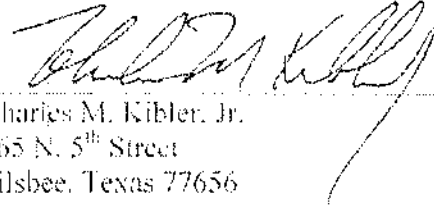
4. Prayer

5. Respondent prays that after notice and hearing upon this matter that the Presiding Officer enter a judgment in favor of Respondent and any and such other and further relief as Respondent may be entitled to in law or equity.

Complainant's Ex. 4

Respectfully Submitted,

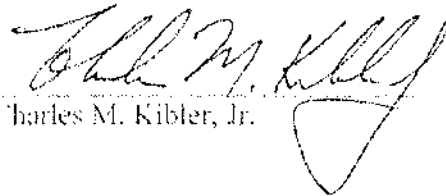
THE KIBLER LAW FIRM



Charles M. Kibler, Jr.  
765 N. 5<sup>th</sup> Street  
Silsbee, Texas 77656  
(409) 373-4315  
(888) 720-1177 FAX  
Attorney for Respondent, Henry R.  
Stevenson, Jr. and Parkwood Land Co.

Certificate of Service

I certify that on August 15, 2011 Respondent's Original Answer were filed with the Regional Hearing Clerk, EPA Region 6, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 via Certified Mail Return Receipt Requested and to the counsel of record, Mr. Russell Murdock, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733 via Certified Mail Return Receipt Requested.



Charles M. Kibler, Jr.

Exhibit 5

## Complainant's Ex. 5

Date: December 15, 2010

Subject: Trip Report/Memo to the File

File No. WE-408, Referral of October 27, 2010, from the Corps of Engineers  
Landowner Henry "Sonny" Stevenson Site located west of Rose City, Orange Co. Texas.

On December 9, 2010, a site visit was conducted on Mr. Stevenson's approximately 80-acre property north of Interstate 10, between Beaumont and Rose City, TX. The purpose of the site visit was to do a wetlands inspection and to verify the Corp's observations regarding an unauthorized discharge of fill material into jurisdictional wetlands on the inside of the levee, and discuss the CWA 404 enforcement process with the property owner and his attorney. Present were Mr. Stevenson, the property owner, his attorney Mr. Chuck Kibler, Corps regulatory representatives Ms. Kristin Shivers and Ms. Diana Stevens, and EPA wetlands inspector Ms. Barbara Aldridge. Mr. Stevenson had authorization from the Corps for the repair of the levee around the wetlands (SWG-2007-00084). Fill was authorized for the riverside of the levee, but not for the wetland (interior) side of the levee. The approximately 80-acre site is a finger of land east of the Nucces River, and west of an oxbow of the river and consists of approximately 72 acres of jurisdictional wetlands inside a levee. The site is adjacent to the Neches River, a Traditional Navigable Waterway (TNW). The Corps issued a JD in July 2010.

The Corps' concern was some 1.26 acres (consisting of one area of 0.78 ac and one of 0.48 ac. per Corps' internal memo of July 27, 2010) which exhibited unauthorized fill characteristics impacting the jurisdictional wetlands. The group walked the levee, beginning at the southwest corner of the property. See attached aerial for photo points. Ms. Aldridge took pictures along the levee as noted on the aerial map. The first area of concern was an area where there was obvious fill (dirt, wire, chunks of cement and asphalt, etc.) placed in a way that impacted the wetlands. See photos no.200-208. Note the drum in photo 211. In no. 214 the fill is visible on the edge of the wetlands in the far right side of the photo. Note the fill material (cement and rebar) in the lower left and lower right corners of no. 208. All photos were taken from the levee.

We observed standing water, buttressed tree trunks and water lines on trees and cattails in the wetland area adjacent to the levee (Photos 209-217; 230-239; 245-247; 267-270). Note that the tree in the center of Photo 223 appears to have been recently cut.

As we walked, Mr. Stevenson frequently brought our attention to the permitted work on the river side of the levee, and emphasized that he was trying to reduce the erosion from the river which was eroding his property. Note what appears to be a crushed culvert pipe in photos 271 & 272.

Another area of concern was a truck turnaround area where it was observed that material had been pushed into the wetland area by heavy mechanized equipment. When

Complainant's Ex. 5

Ms. Aldridge questioned him about the equipment, Mr. Stevenson said he used a dump truck to bring in fill from off site, dozers to level the material, and a track hoe to do the work. He stated that he tried to stay inside the 'wetland flags' designating the wetland areas that his contractor, GTI Environmental, had delineated and marked. He stated that he had done no further work since the Corps issued a cease & desist order on 8/3/10. He was also ordered by Orange County to stop work.

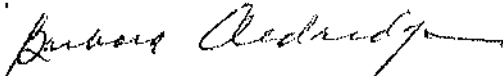
Photos 244, 251-252 and 294, 296-297 show tire tracks typical of mechanized equipment. Photos 253-259 show concrete, pipe and brick debris fill material adjacent to wetlands. Photo 260 is looking northwest at the Nueces River from the area of the truck/equipment turnaround. Fill material is visible in the foreground. The levee height can be seen in the middle right-hand side of the photo. Photos 261-262 are from the turnaround area, with the levee and the wetlands to the right. Photo 264 is a view of the river side of the levee looking upriver. Photo 265 is looking back south toward the I-10 bridge where it crosses the Nueces River. No. 271-276 photos are from the levee looking towards the river.

Ms. Shivers observed that some of the fill areas which she had photographed in July 22, 2010, appeared to have had more material added or moved after the Corps issued the cease and desist order. Ms. Shivers observed the absence of vegetated growth on these areas (see photos no.200-208.)

See attached marked aerial for photo points and photo ID chart.

Other pertinent information:

Mr. Stevenson stated that he intended to develop all the wetland area, and to lease some of the property to the state entity (TXDOT) that would be constructing a new I-10 bridge over the Neches River. Mr. Kibler stated that he intended to sue Orange County on behalf of his client. After Ms. Aldridge stated that EPA would likely issue an Order to remove the fill and restore the site, as well as issue a penalty order of up to the statutory max, Mr. Kibler also stated that his client "would rather pay me" than pay an EPA penalty.



Barbara Aldridge  
Wetlands Section

Exhibit 6

WETLANDS FIELD INSPECTION REPORT FORM

[This form is to be completed in the field then placed into the case file. After that, no changes shall be made to these notes unless clearly noted and dated on the form. A supplemental information form should be used for additional information obtained after the field inspection]

Date of Inspection 12/19/10 EPA Inspector(s) Brian Whipple

Others Present (List)

Name	Representing
<u>Diana Stevens</u>	<u>Corps</u>
<u>Kristin Shivers</u>	<u>Corps</u>
<u>Sarah Stevenson</u>	<u>Danby Location</u>
<u>Chuck Kibler</u>	<u>Representing M.C. Stevenson, et al</u>

1. TYPE OF INSPECTION:

Initial Site Visit   
 Follow-up Site Visit \_\_\_\_\_ Case/File # WE408  
 Enforcement Compliance Inspection \_\_\_\_\_  
 After-the-Fact Permit Compliance Inspection \_\_\_\_\_  
 Other \_\_\_\_\_

2. SITE LOCATION:

Case Name: (discharger/Company/site) Henry S. Stevenson  
 Address/City/County/State N. of Neches R. Pkwy, Orange TX ZIP 77142

Specific Location 1/2 ac w/ 79 acres, 28 in. across  
 LAT 30.098687 LONG -94.086794 Added 12/14/10

3. DESCRIPTION OF WORK (Attach Sketch, page 3)

Narrative Description material brought in from off site - stored - then used to build up levee. Dump truck - bring in. Levee w/ dozer, track hoppers to load.  
(Co record 6/23/10)

Work in Progress? NO Date work started? Summer 2007

Approximate Amount of Fill 1/10 acre 1.26 ac [at 2 locations w/ site]

Type of project Levee repair - bring in fill, stored it, used it to repair levee



## 4. PHOTOS:

How many photos were taken? 105

Number and approximate location and perspective of each photo should be noted in field sketch (page 3)

## 5. DESCRIPTION OF WETLANDS

Description of Wetlands Impacted, including dominant plant species

wetlands adjacent to Neches River - navigable TNW  
cypress & oaks forested wa; approx 72 ac

Soils Information:

hydric soil assumed in COPE J D, of July 2010

Hydrology:

located w/ 100yr floodpl. of Neches R. Surface water present

Description of Impacts to wetland functions (current/planned)

overflow material from lease repair parked into  
Wetlands (concrete, dirt etc)

6. PARTY DOING WORK MR Henry R "Sonny" Stevenson

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Information Provided: \_\_\_\_\_

7. OTHER PARTY Chuck Kibler, MR. Stevenson's attorneyAddress: 765 N. 5th St Silsbee TX 77656Phone: 409 373-4313

Information Provided: \_\_\_\_\_

## 8. Reporting:

Was a potential violation observed? YDid you inform the facility of this violation? YDid the facility restore the violation while you were there? NDid you discuss general wetlands regulations with a representative of the project? YDid you discuss project/site specific wetlands regulations with a representative of the project? Y

see attached aerial print out [added 12/15/10]

Photo Log: (Note point of photo in field sketch)

see attached [added 12/15/10]

Subject/Direction	File Name/number (can be added at office)
1: _____	_____
2: _____	_____
3: _____	_____
4: _____	_____
5: _____	_____
6: _____	_____

Field Notes and sketches prepared by B. J. Aldridge (sign)

Tracking and Review: Let Tom see original for ICIS and chart entry and adequacy review. Make sure report includes location address and ZIP code, or lat./long. In decimal format( 32.1234 etc.)

Complainant's Ex. 6

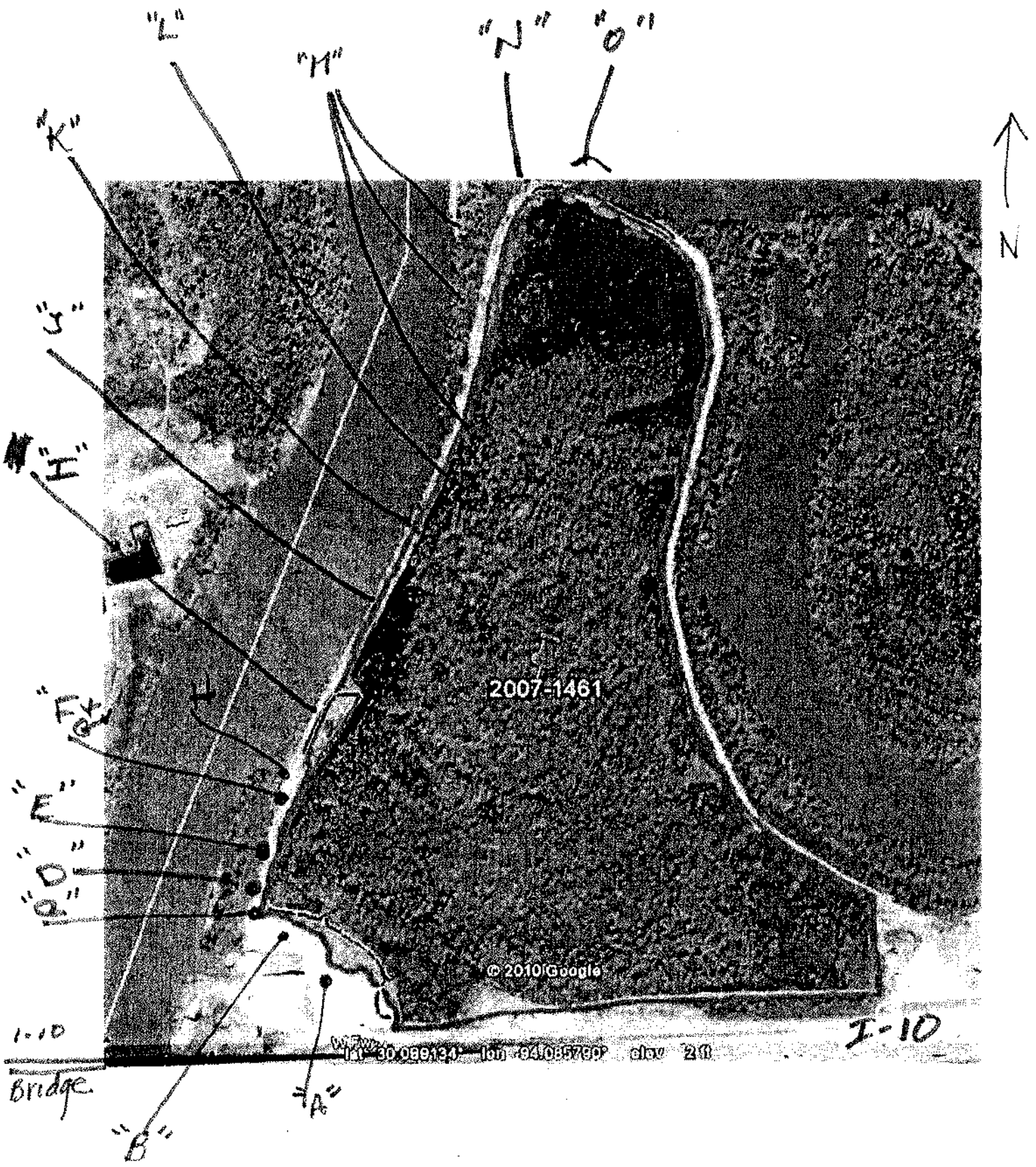


PHOTO VIEWPOINTS

Stevenson Site  
WE Page 4 of 9

Complainant's Ex. 6

<b>Photo Log - Stevenson Site WE 408 - 12/9/10</b>		
<b>MAP POINT</b>	<b>jpg #s</b>	<b>description/comment</b>
A	195-199	beginning of fill at south west corner of site
B	200-207	fill adjacent to wetlands
C	208-211	edge of levee fill looking east
D	212-218	cypress, cattail, standing water
E	219-220	River between levee and small island
F	221-228	panorama panning right to left; 2nd fill area in the left side of 227-228
G	229	wet area on left; looking back toward I-10 bridge
G	230-236	looking from levee into wet area
H	237-242	S. edge of turnaround; note fill material
I	243-262	Truck turnaround area; note tracks & fill/debris
J	263-264	River Side looking upriver
J	265	Looking back at I-10 bridge towards Beaumont
K	266	Looking back south at turnaround area in mid distance
L	267-270	wet area near north end of site
L	271-272	River Side looking upriver; note crushed culvert pipe
M	273-275	remnant trees/island on the River side of levee
N	276	on the north edge of site looking at river
O	277-283;	Looking into wet area at the north end of site
O	284	Looking upriver on River side of levee at north end of site
O	285-288	Looking south into wet area at north end of site
btw J & I	289-293	Walking back from the north end, looking back at the edge of the turnaround area
I	294-297	fill area; note tracks
I	298-299	fill area without vegetation

*WE 408*  
Complainant's Ex. 6  
*1-10 East of Beaumont TX*

Google maps

Directions to Exit 856  
317 mi - about 5 hours 32 mins

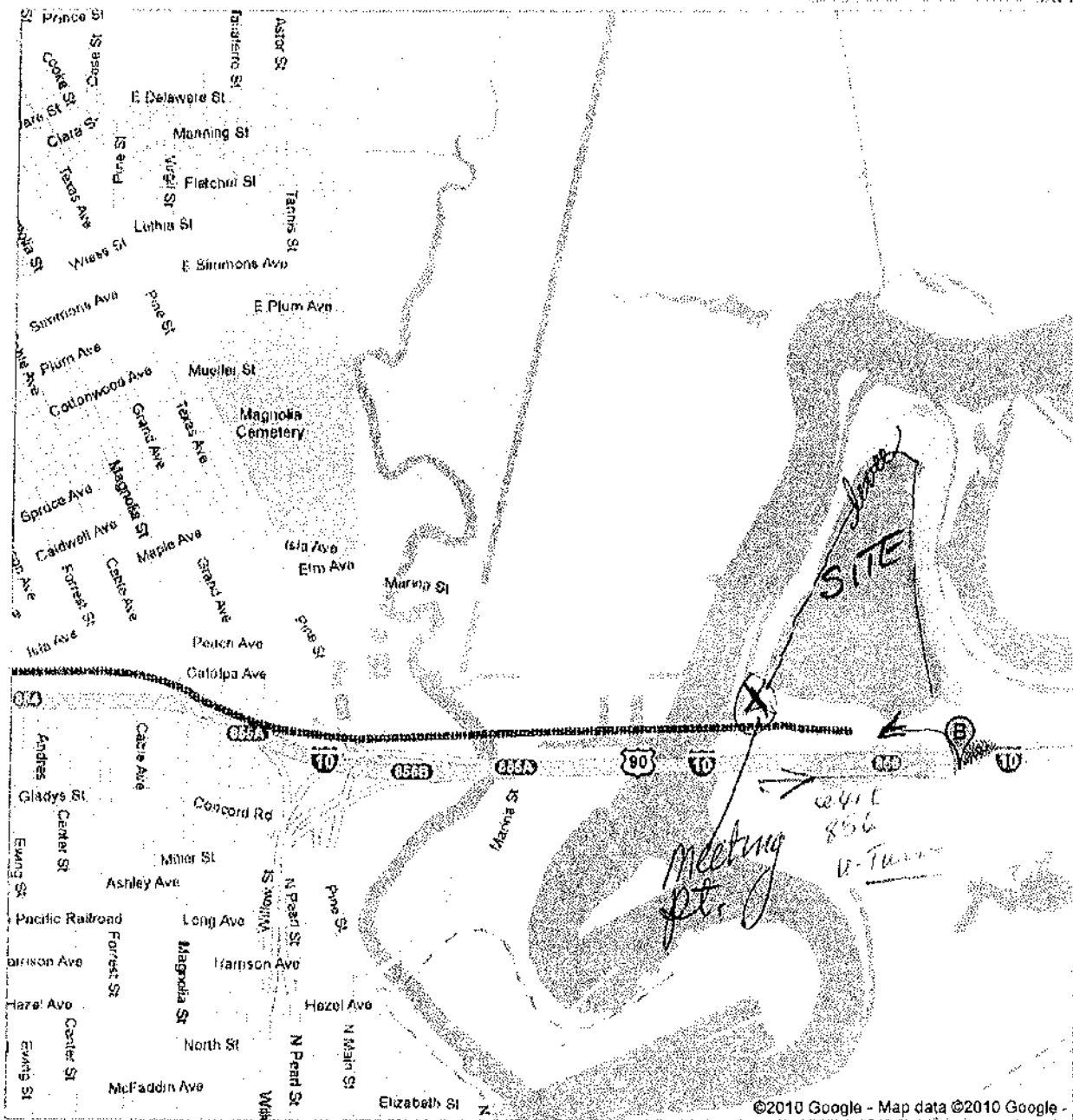
*Stevenson Site*

Save trees. Go green!

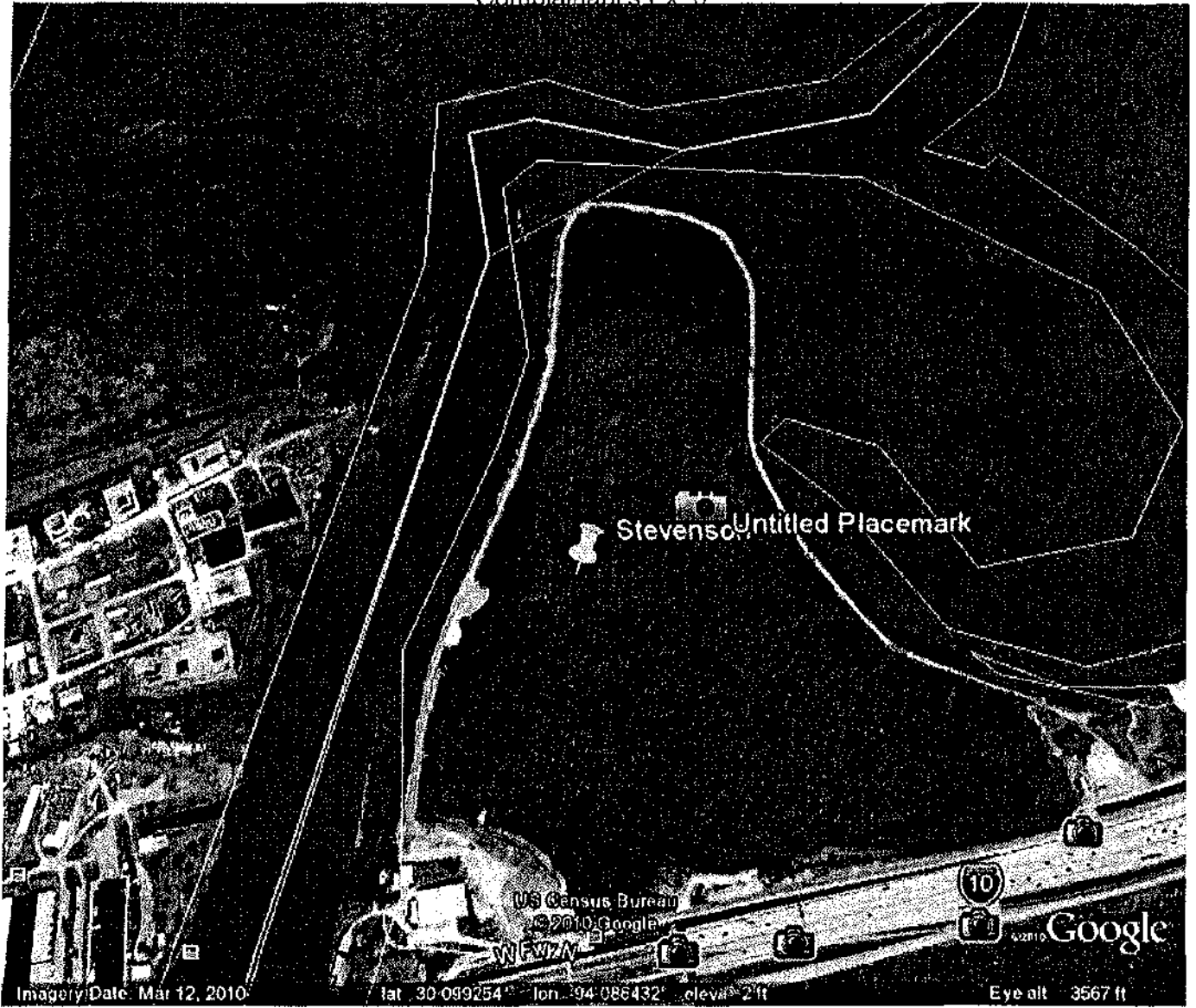
Download Google Maps on your phone at [google.com/gmm](http://google.com/gmm)



*Beaumont*



©2010 Google - Map data ©2010 Google





Imagery Date: Jan 1, 2009

lat: 30.097303 lon: -94.088411 elev: 3 ft

Eye alt: 1872 ft



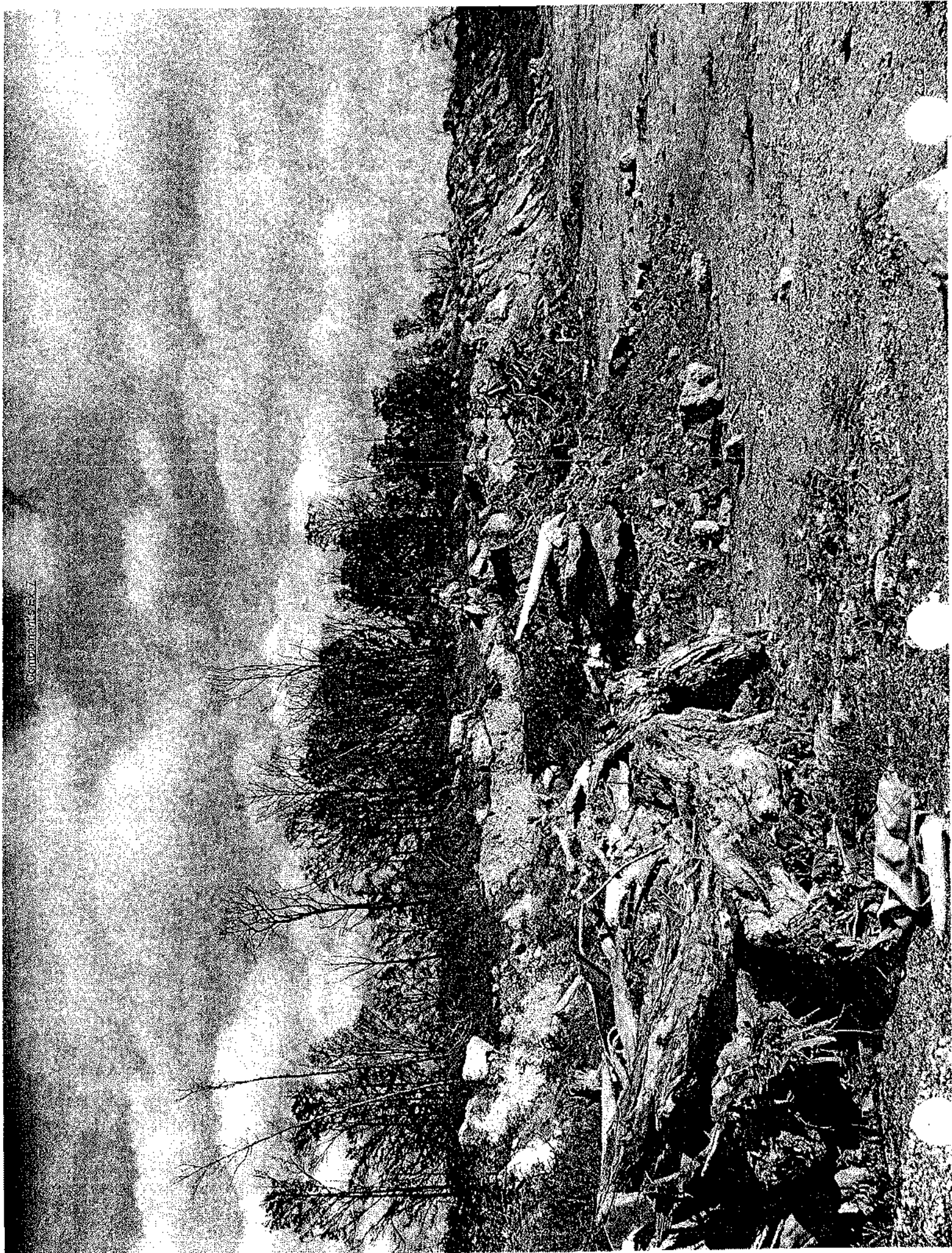


Exhibit 7

Complainant's Ex. 7

Photo Log - Stevenson Site WE 408 - 12/9/10		
MAP POINT	jpg #s	description/comment
A	195-199	beginning of fill at south west corner of site
B	200-207	fill adjacent to wetlands
C	208-211	edge of levee fill looking east
D	212-218	cypress, cattail, standing water
E	219-220	River between levee and small island
F	221-228	panorama panning right to left; 2nd fill area in the left side of 227-228
G	229	wet area on left; looking back toward I-10 bridge
G	230-236	looking from levee into wet area
H	237-242	S. edge of turnaround; note fill material
I	243-262	Truck turnaround area; note tracks & fill/debris
J	263-264	River Side looking upriver
J	265	Looking back at I-10 bridge towards Beaumont
K	266	Looking back south at turnaround area in mid distance
L	267-270	wet area near north end of site
L	271-272	River Side looking upriver; note crushed culvert pipe
M	273-275	remnant trees/island on the River side of levee
N	276	on the north edge of site looking at river
O	277-283;	Looking into wet area at the north end of site
O	284	Looking upriver on River side of levee at north end of site
O	285-288	Looking south into wet area at north end of site
btw J & I	289-293	Walking back from the north end, looking back at the edge of the turnaround area
I	294-297	fill area; note tracks
I	298-299	fill area without vegetation

COMPTON





CG 5 EX 7

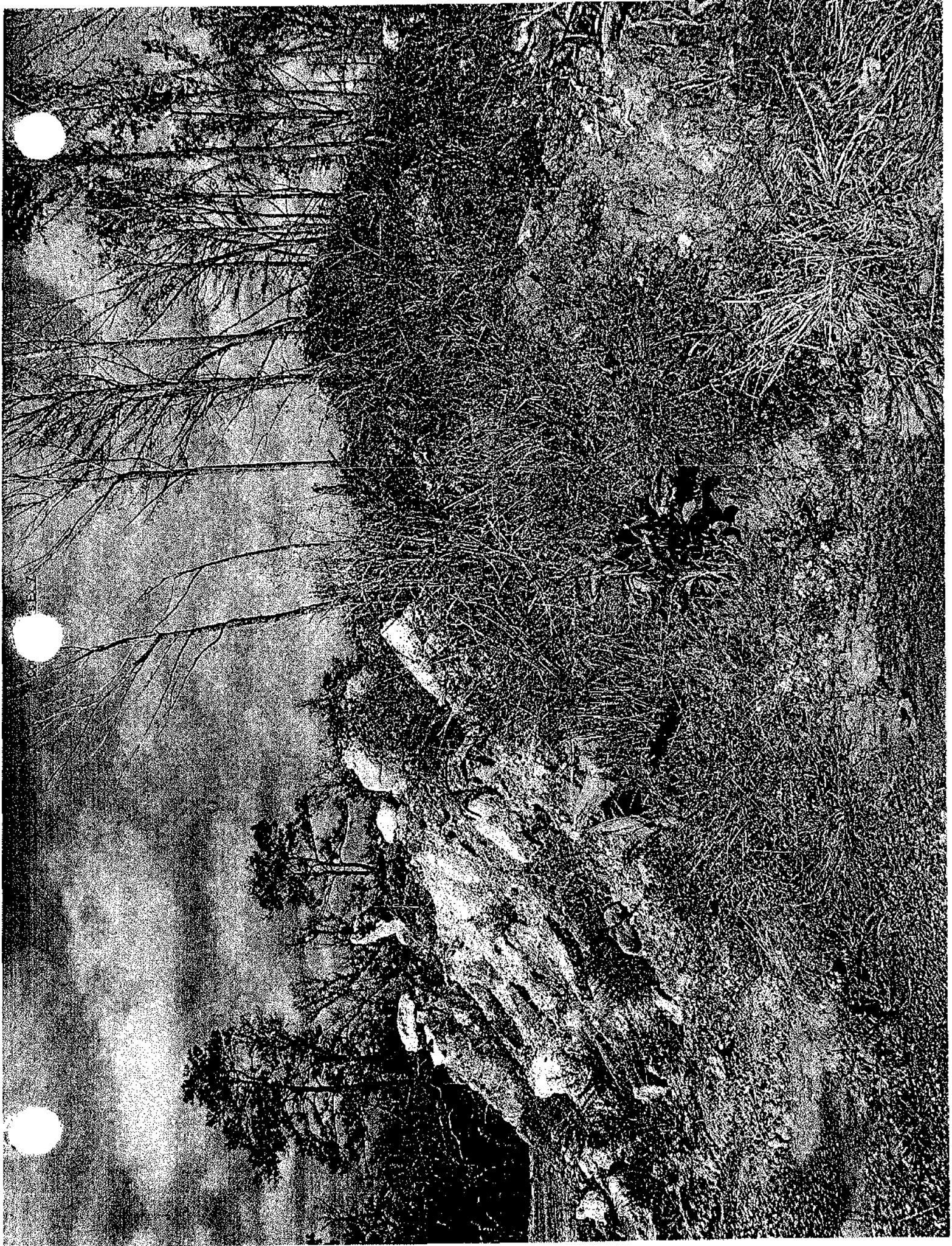






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Complainant's Ex. 7

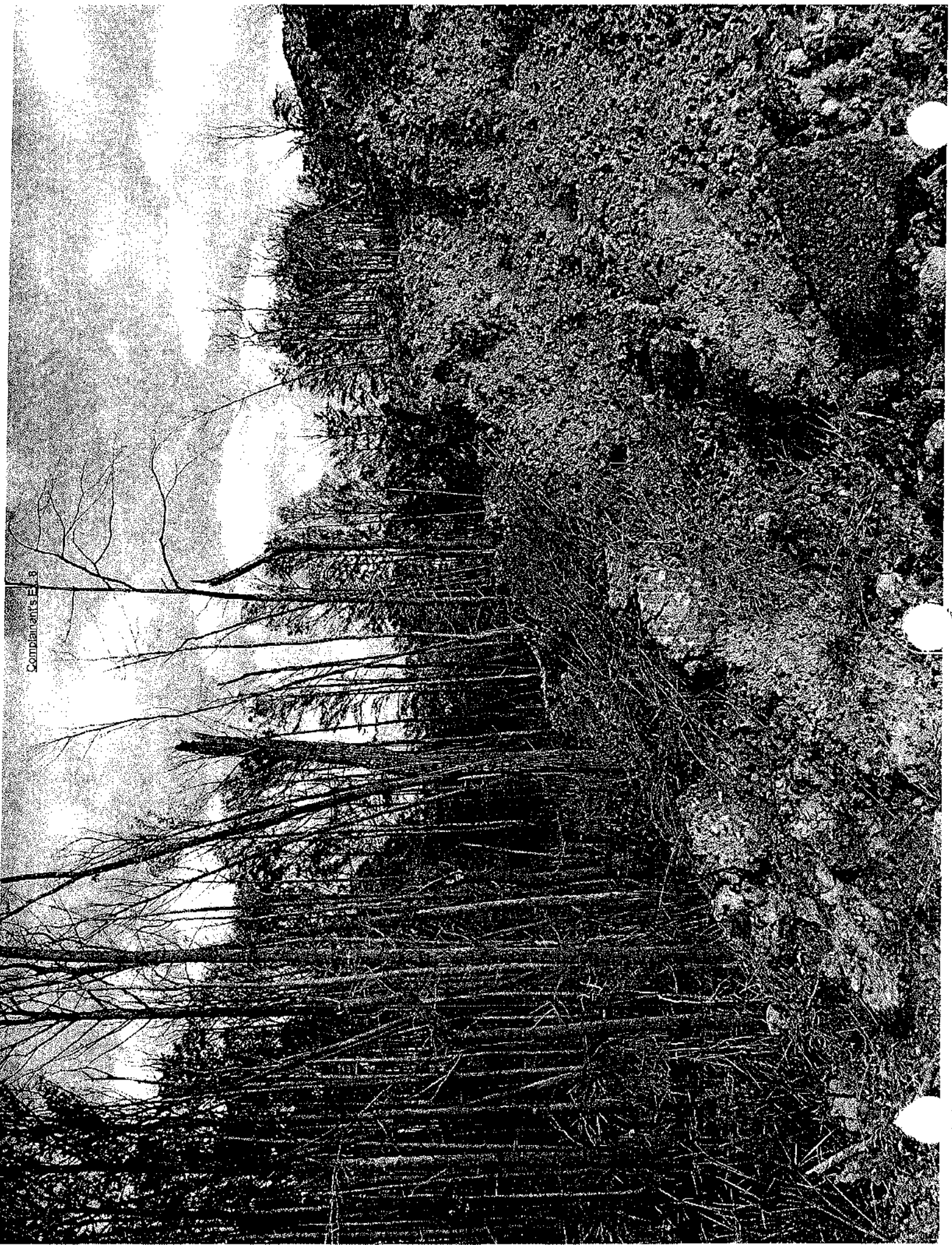


Exhibit 8

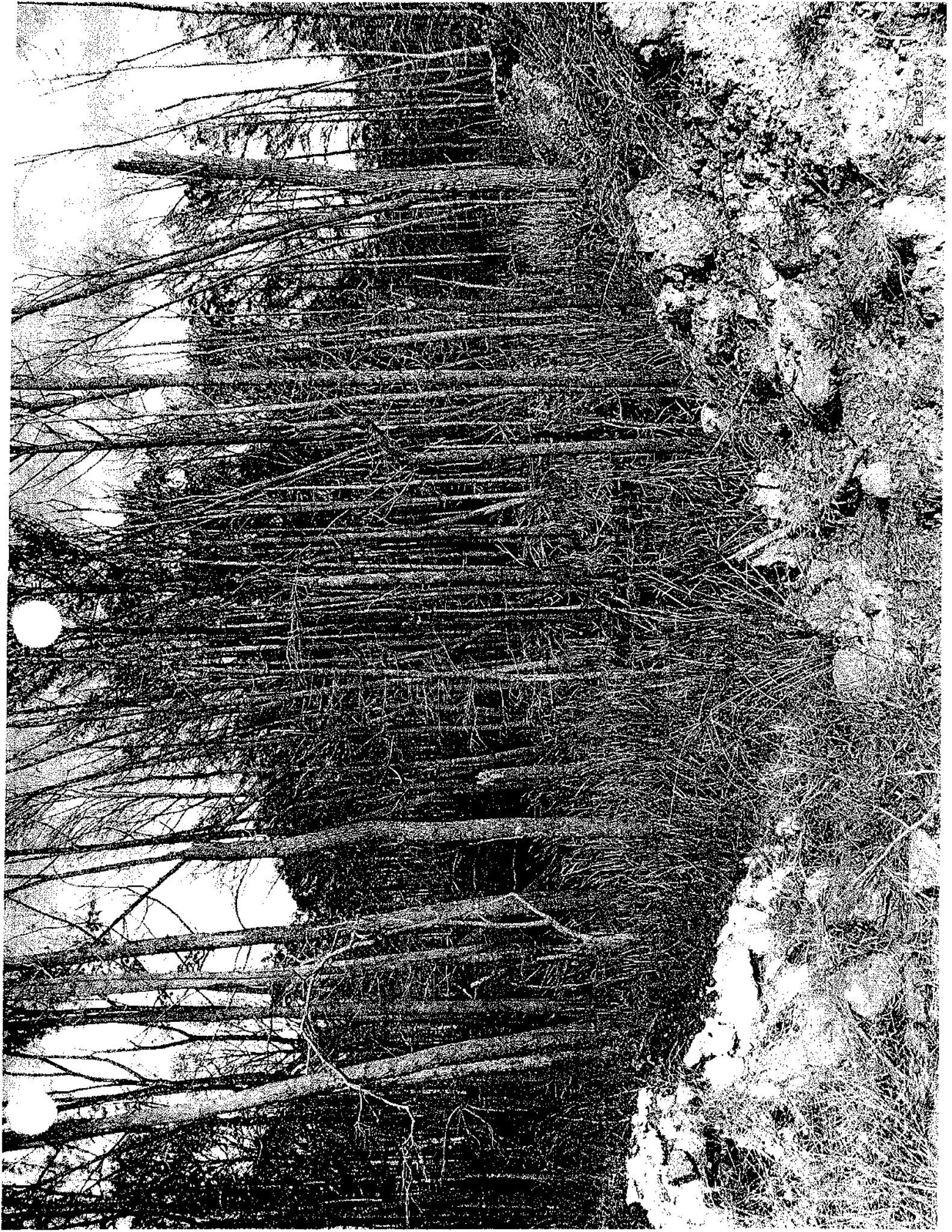


Complainant's Ex. 8

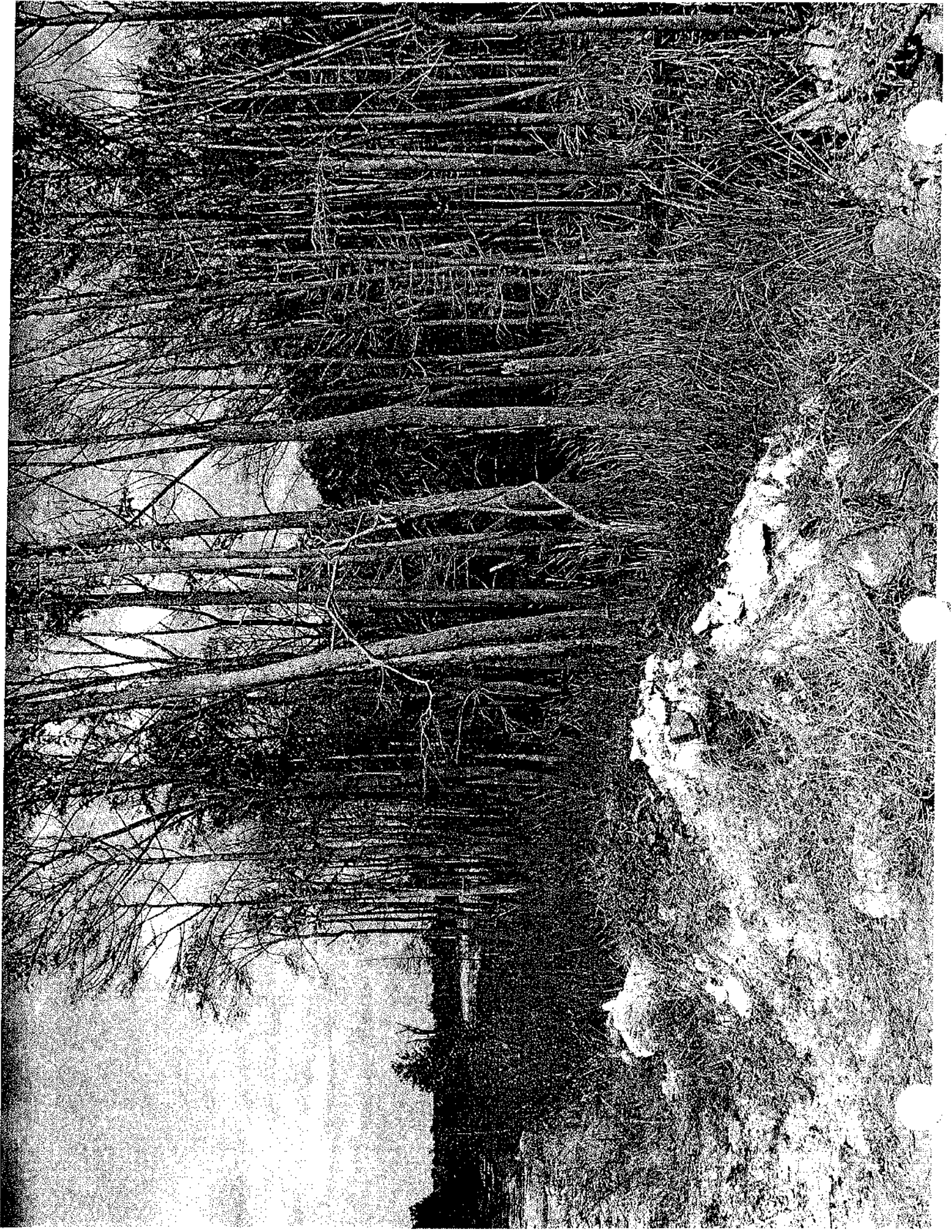
Photo Log - Stevenson Site WE 408 - 12/9/10		
MAP POINT	Jpg #s	description/comment
A	195-199	beginning of fill at south west corner of site
B	200-207	fill adjacent to wetlands
C	208-211	edge of levee fill looking east
D	212-218	cypress, cattail, standing water
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O	284	Looking upriver on River side of levee at north end of site
O	285-288	Looking south into wet area at north end of site
btw J & I	289-293	Walking back from the north end, looking back at the edge of the turnaround area
I	294-297	fill area; note tracks
I	298-299	fill area without vegetation



Complaints E 3



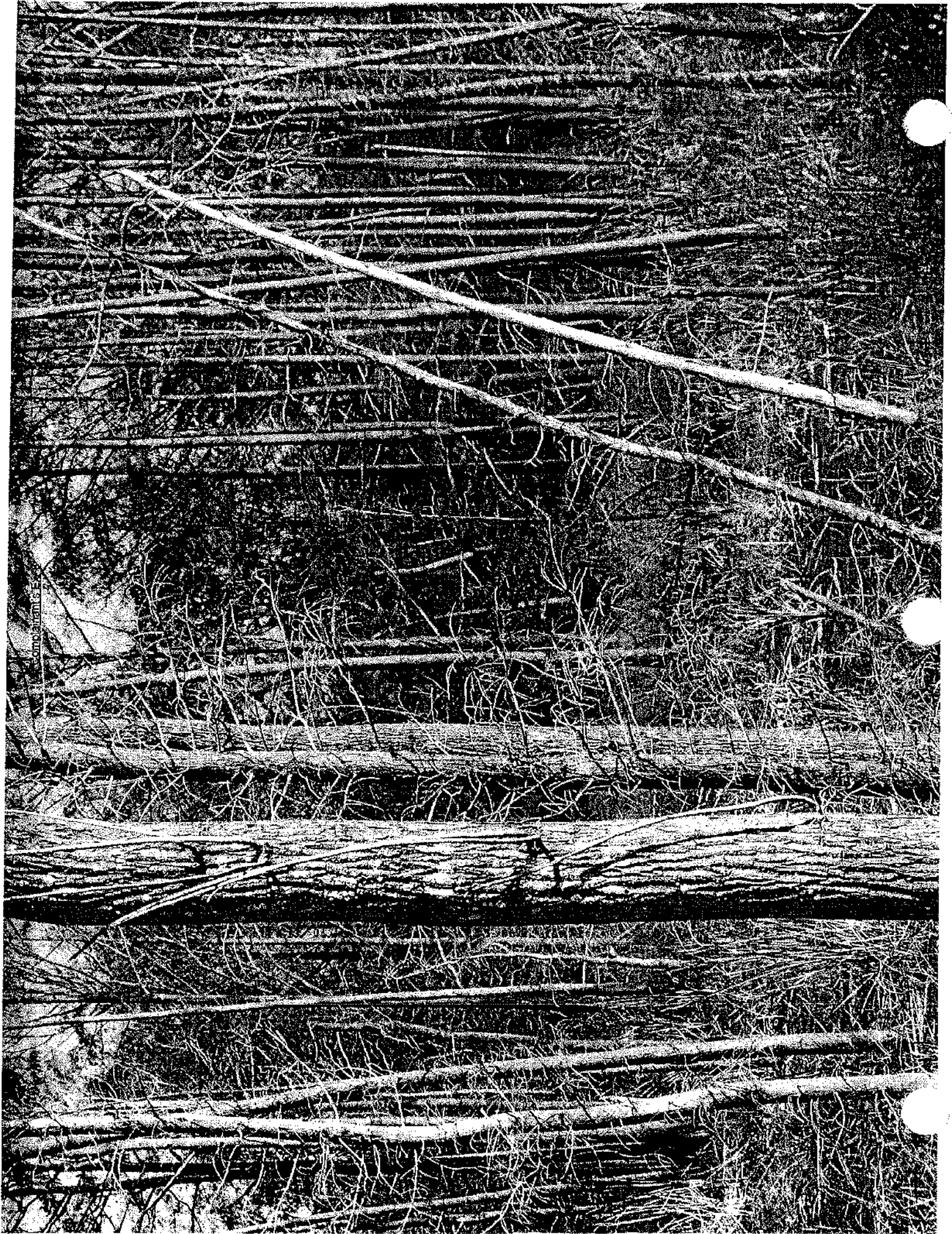


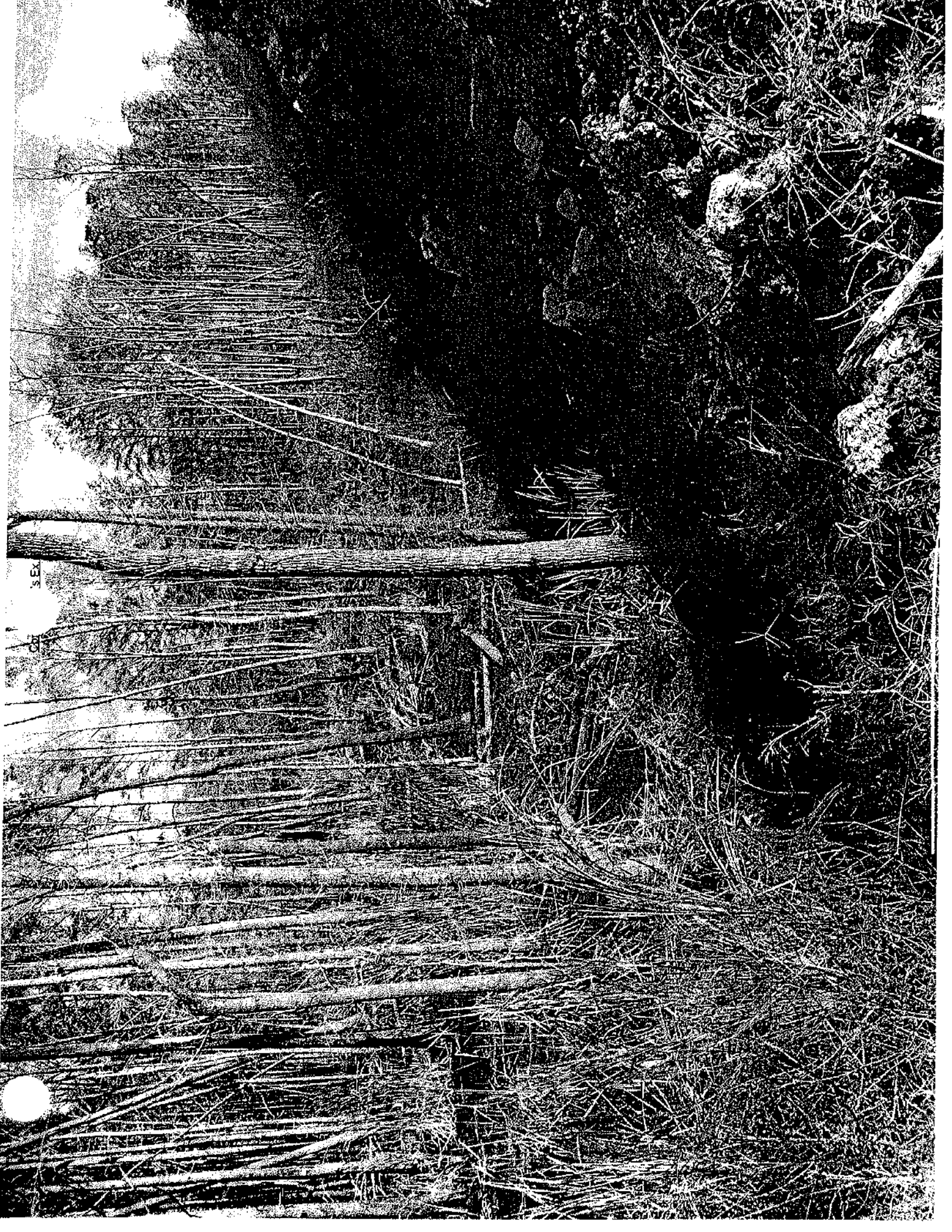


CONT Ex. 8









EX 3



