KEAN | MILLER LLP
ATTORNEYS AT LAW

Michael A. McGlone PARTNER
PH (504) 585-3059 DIRECT FAX (504) 620-3348
EMAIL ADDR MIKE.MCGLONE@KEANMILLER.COM

April 25, 2016

Col. Richard L. Hansen
U.S. Army Corps of Engineers
New Orleans District
P. O. Box 60267
New Orleans, LA 70160

Milton W. Boyd
Chief, Litigation Branch
Office of the Chief Counsel
U.S. Army Corps of Engineers
441 G Street NW
Washington D.C. 20314-1000

G. Rogers Sloan
Division Counsel
Mississippi Valley Division
U.S. Army Corps of Engineers
1400 Walnut Street
Vicksburg, MS 39180

Stephen Roth
District Counsel
U.S. Army Corps of Engineers
New Orleans District
P. O. Box 60267
New Orleans, LA 70160

Re: G.D.E./Corps of Engineers

INFORMAL NOTICE OF INTENT TO SUE

Gentlemen:

The undersigned represents GDE Investments LA, LLC.

GDE Investments LA, LLC ("GDE") provides, to the U.S. Army Corps of Engineers ("Corps"), an informal notice of its intent to file suit against the Corps for the reasons and causes of action/claims set forth below.

The lawsuit would be an action for breach of contract and seek declaratory and injunctive relief based upon a present actual and judiciable controversy between the parties. The request for relief would be proper pursuant to 28 USC §2201 and 5 USC § 701. The purpose of the litigation would be to address the Corps' arbitrary, capricious actions and abuse of discretion on multiple occasions regarding GDE Investments LA, LLC.

CWA Section 404, 33 U.S.C. §1344, requires a person to obtain a permit from the Corps to discharge dredged or fill material into "waters of the United States", unless the activity is statutorily or regulatory exempt. Though not all wetlands are subject to Section 404, jurisdictional wetlands are considered to be "waters of the United States" pursuant to regulations promulgated under the CWA. As part of the process of obtaining a permit, applicants must comply with the U.S. Environmental Protection Agency's ("EPA") 404(b)(1) Guidelines, 40 C.F.R. Part 230. The Guidelines require an applicant to avoid and minimize wetland impacts to the maximum extent practicable and to compensate for the remaining unavoidable adverse impacts to wetlands.

Thus, applicable Corps and EPA regulations and guidance require the applicant to offset (compensate for) the loss of functions and services of the aquatic environment.

Compensatory mitigation may comprise restoration, reestablishment, enhancement, or preservation of certain environmental resources for the purpose of offsetting the authorized impacts to wetlands.

One of the means of offsetting these impacts is for the applicant to purchase "mitigation credits" from a commercial mitigation bank. "Mitigation credits" represent the accrual or attainment of aquatic functions, essentially a lift in ecological functions and services, at a wetland mitigation bank achieved through restoration, reestablishment, enhancement or preservation. Mitigation banks comprise properties upon which ecologically beneficial projects are conducted to restore, enhance or preserve wetlands, to create an ecological lift and to generate mitigation credits for sale to applicants for CWA Section 404 permits to offset the unavoidable losses of wetlands. Though the Corps, at 33 C.F.R. Parts 325 and 332, and EPA promulgated jointly a rule, i.e., Compensatory Mitigation for Losses of Aquatic Resources, 40 C.F.R. Part 230, on April 10, 2008, it does not apply to this action because the rule grandfathered all mitigation instruments approved prior to July 9, 2008.

Pursuant to the then Mitigation Guidance, an Interagency Review Team ("IRT"), as it was called at the times pertinent herein, reviewed proposals by private parties, referred to as "Sponsors", to conduct mitigation projects and to thereby establish mitigation banks. The Corps chaired the IRT which was also comprised of representatives of EPA, the U.S. Fish & Wildlife Service ("FWS") and the Louisiana Department of Wildlife & Fisheries ("LDWF").

The "Sponsor" of a mitigation bank, such as, GDE herein, conducts the compensatory mitigation project and, over time, is allowed to make mitigation credits available for sale to permit applicants as they are released by the IRT lead agency, in this case the Corps. Though the Corps, at 33 C.F.R. Parts 325 and 332, and EPA promulgated jointly a rule, i.e., Compensatory Mitigation for Losses of Aquatic Resources, 40 C.F.R. Part 230, on April 10, 2008, it does not apply to this action because the rule grandfathered all mitigation instruments approved prior to July 9, 2008. The Sponsor and IRT negotiate a wetland "mitigation banking instrument" ("MBI") which is a contract between the private party (the "Sponsor") and the government, whereby the sponsor creates, restores and/or preserves certain ecologically important areas in consideration for the government's authorization and allocation of mitigation "credits."

I briefly outline the claim facts:

First Claim - Breach of Contract
(Corps approved Fence and Conservation Servitudes)

GDE commenced discussions with the Corps in 2005 regarding the establishment of a mitigation bank on valuable farm land owned by GDE in Evangeline Parish. Even though the land was capable of being farmed or developed and had high value, GDE believed the land could be profitably used for compensatory mitigation in a wetland mitigation bank. GDE and its agent/consultant, Kip Manuel, contacted the Corps to solicit its input on the merits of a wetland mitigation bank and encumbering the land with a perpetual conservation servitude to generate wetland mitigation credits that could be sold to mitigate third parties' authorized impacts to wetlands.

In a perpetual conservation servitude a GRANTOR, such as GDE, an owner of immovable property, restricts a number of uses of property which restrictions may be enforced by a third-party holder as well as the members of the Interagency Review Team (IRT) who hold third party rights of enforcement. Equally important, GRANTOR, GDE, specifically reserves certain rights, such as, "all rights to hunting, recreation, forest management, road maintenance, mineral ownership and exploration, **high fence installation** and such other land uses that are not in contravention of that certain

Mitigation Bank Interagency Agreement." (*See* Conservation Servitude, Section 4 – Exhibit "3")

Prior to final review and during the course of negotiations on the bank, on February 16, 2007, GDE's agent sent an email to Dr. James Barlow, the Corps designated representative, requesting approval of a fence that would be located around the entire perimeter of the proposed bank. Dr. Barlow responded on February 21, 2007: **"There is not a problem with installing a high/game fence."** (*See* Exhibit "1") On April 23, 2007, Colonel Wagonner signed the MBI rendering it along with all of its ancillary documents, i.e., appendices, etc., an agreement, a contract, between the United States and GDE, each with its own collective set of obligations one to the other. (*See* Exhibit "2" which is not a complete copy). GDE's representative, Mr. Greg Elliott, had signed the agreement on April 2, 2007.

GDE met its obligations in regard to the Conservation Servitude. The Conservation Servitude, which included the **high/game fence** was directed for filing by the New Orleans District, U.S. Army Corps of Engineers as per the MBI. (*See* Exhibit "3")

In September 2007, a draft of the required conservation servitude was emailed to Dr. Barlow at the Corps for review, comment and approval. Dr. Barlow inquired whether Robert Northey, an attorney in the Corps' Office of Counsel, wanted to review the instrument. Mr. Northey responded that he may have already done so but the servitude should be recorded and if there was a problem the Corps would send it back for revisions. In September 2007, GDE executed the Conservation Servitude and sent a copy to the Corps. The Conservation Servitude clearly and unequivocally reserved to the Sponsor the right to install a high fence. GDE installed a **high/game fence** during the summer of 2007.

After Dr. Barlow's review, he conveyed it to Robert D. Northey, Office of Counsel, who stated:

> "James: Did I already review his Louisiana Conservation Servitude? Do you trust this guy enough to do the right thing, that the conservation servitude will protect to credit lands in the manner we expect? Will he file the conservation servitude as we provided him ? If so, then no, I don't want to see ahead of time. But....you NEED for your Administrative Record a copy of the recorded servitude clearly showing the recordation information. As that time, we can make sure the servitude is appropriate. (*See* Exhibit "4")

By correspondence dated August 8, 2008, Mr. Pete Serio, then Regulatory Branch

Chief, stated:

> ". Because the title questions remain on this tract, we recommend that the conservation servitude be revised to exclude this 60-acre tract… All requirements have been met except for providing recorded conservation servitude as amended above . . .". (*See* Exhibit "5")

Four separate federal officials; namely, Barlow, Northey, Waggoner and Serio fully reviewed and approved the Conservation Servitude and its reservation for the construction of a "**high fence**." Following establishment of the GDE Mitigation Bank, GDE constructed a **high fence** consistent with its reserved right. The first GDE Bank site inspection occurred on July 11, 2012 by Corps bank manager Jacqueline Farabee. Two intergovernmental emails were sent from Jacqueline Farabee to the GDE Bank IRT on September 12, 2012 in which she wrote "Please note on number 4 of the servitude that it states that the GRANTOR specifically reserves all rights to hunting, recreation, forest management, road maintenance, mineral ownership and exploration, **high fence installation** and such land uses not in contravention of that certain Mitigation Bank Interagency Agreement. As you can see the bank is enclosed by a **high fence**". On May 30, 2013, Jacqueline Farabee wrote to the IRT "This is an older bank and the owner holds the servitude and a **high fence** was written into the banking agreement. (*See* Exhibit "6")

However, Corps management ultimately took the position in July 2013 or just after Mr. Pete Serio, former Chief of Regulatory, retired that the MBI list of "Uses Prohibited by the Conservation Servitude" lists at p. 17 #5. "Commercial, industrial, agricultural, or residential uses of the Property or **partitioning by fencing** without prior approval from the IRT." Also, note that the Corps approved the sale of 73 mitigation credits from 2007 to September 2012 by the GDE Bank with full knowledge that the **fence** was in place. In the 2013 performed Jurisdictional Determination (JD) it was determined that 367 acres of bottomland hardwood (BLHW) wetland credits were approved by the Corp. (*See* Exhibit "7") Also, the GDE Bank per the GDE MBI letter revision dated August 8, 2008 contains 457.3 total acres. (*See* Exhibit "5")

From 2007-2012, GDE performed the required plantings and other work required by the MBI. During this period, GDE sold the aforementioned 73 mitigation credits released by the Corps and submitted the required annual sales ledger to the Corps, as per the MBI.

On September 18, 2012 , the Corps issued a letter to GDE suspending further credit sales from the bank. (*See* Exhibit "8a") The letter identified various compliance issues, but there was no mention of the **fence** being an issue. The Corps issued additional letters on May 10, 2013 again discussing compliance issues, but no mention of the **fence**. (*See* Exhibit "8b:) On July 22, 2013 (*See* Exhibit "8c"), the Corps discussed perceived

compliance issues and questioned the difference between the MBI and Conservation Servitude regarding the **fence;** therefore, the fence being an issue was not mentioned for 12 months after the Corps first GDE Bank site visit. On September 3, 2013, GDE sent the Corps a letter explaining the fence. (*See* Exhibit "8d")

Without detailing the specifics, suffice it to say that since April of 2015 GDE and its representatives have periodically met with the Corps to discuss the **fence** issue. Various representatives of the Corps have been consulted, but to date GDE Mitigation Bank is unable to sell its credits as a result of the unauthorized, arbitrary and capricious actions and abuse of discretion of the Corps.

The Corps continues to insist that GDE remove the contractually agreed upon **fence**.

The **MBI** requires that the conservation servitude incorporate the **MBI** by reference and bind the parties with the conservation servitude because it is a legally binding document. Thus, if a real conflict existed, it is resolved by the conservation servitude.

The Corps' imposition and insistence of the removal of the **fence** is a breach of contract. The Corps' imposition and insistence of the removal of the fence adversely affects GDE. It would illegally require expenditures of considerable sums of money to accommodate the Government's imposition and insistence of removing the fence. To make GDE remove the fence constitutes a breach of contract by the Corps and subjects it to damages while the Corps continues to violate a contract with a private party. As an aside, to remove the fence would require GDE, to comply with state law, to slaughter or capture and move the entire deer herd contained therein, thus incurring additional damages as a result of the Corps arbitrary and capricious actions and abuse of discretion.

Second Claim - Breach of Contract
(Corps wrongfully demanded fence be removed
and denied further sale of mitigation credits)

The Corps has continued to insist on the removal of the fence from the 280 acres of mitigation credits that exist inside the **fence**. The Corps' insistence in this instance is another breach of contract.

The Corps' imposition and insistence of the removal of the fence adversely affects GDE. It would illegally require expenditures of considerable sums of money to accommodate the Corps' imposition and insistence of removing the fence. To make the GDE remove the **fence** constitutes a breach of contract with a private party.

The Conservation Servitude in Section 5 clearly and unequivocally reserves to the Grantor, GDE, the right to construct or "**install high/game fence**."

Furthermore, no conflict exists between the reserved right to erect **high/game fence** of the Conservation Servitude versus the List of Uses not Allowed in the MBI. However, if a conflict did exist, resolution is governed by Section XVI.B (Specific Language of MBI Shall Be Controlling): To the extent that specific language in the document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the BI and that are not legally binding, the specific language within the MBI and any associated Bank Development Plans shall be controlling. However, the MBI requires that the conservation servitude incorporate the MBI by reference and bind the parties with the conservation servitude because it is a legally binding document. Thus, if a real conflict existed, it is resolved by the conservation servitude.

After two and one-half years attempting to resolve this issue with the Corps, all administrative options have been exhausted. An ecological suitability study performed by the GDE Bank Manager and Professional Wetland Scientist, Josh McDaniel has been performed. (*See* Exhibit "9") That study demonstrates that the objectives of the proposed mitigation bank, including the physical, chemical and biological characteristics of the bank support the planned types of aquatic resources, function and wildlife. In fact, those resources and wildlife thrive inside the bank when compared to the same resources and wildlife outside the bank.

Third Claim – Non-compliance with Regulation

Meetings with the Corps have been held. During a meeting between GDE, its consultants and the Corps at GDEs office held on October 22, 2015, it was suggested that the District and GDE meet and confer to agree on a process to account for the presence of a high fence. The agreed upon process was to perform a functional reassessment of the mitigation bank with the existing fence in place to determine if the credits inside the fence should be adjusted. The Corps has neither proposed nor performed a functional reassessment. In violation of the 2008 Mitigation Bank rules, the District has acted in an arbitrary and capricious manner and abused its discretion by requesting a formal prospectus of the type which would be required if initializing the establishment of a mitigation bank instead of attempting to reach a comprise modification of the existing MBI. Also, by submitting a prospectus, the Corps and the IRT would have the right to disallow all the credits inside the **fenced** portion of the GDE Bank. The District's position in connection with the voluminous documentation required is not only a breach of contract, but arbitrary and capricious and an abuse of discretion. It is an inordinate amount of documentation not necessary for the simple process of performing a functional reassessment of the bank with the existing fence in place.

All conferences with the Corps have been unsuccessful; the issues were not resolved.

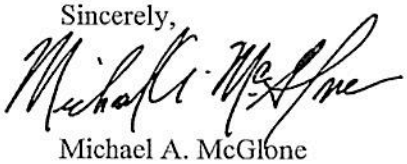
The timeline (*See* Exhibit "10") prepared by GDE sets forth the commencement of discussions with the Corps, interim activities and concludes with the April 1, 2016 summarization with the Corps continuing to demand unnecessary and excessive documentation. The attached exhibits, in addition to the timeline, include the February 21, 2007 email from James Barlow to Kip Manual which indicates there is not a problem with the installation of "**a game fence**."

The above outlines the most serious issues/claims as between GDE and the Corps. While the 60 day Notice of Intent to Sue is not required in this instance GDE, now, as it continuously has in the past, wishes to keep the Corps advised of its intended actions.

Hopefully, GDE and the Corps can achieve a resolution before the commencement of litigation. Should litigation ensue GDE will claim 1) breach of contract, 2) seek removal of all Corps interference with the fence, 3) seek removal of the suspension of the mitigation credits, 4) seek a determination that GDE has fulfilled all required reporting requirements and 5) damages.

We look forward to your comments.

Sincerely,



Michael A. McGlone

MAM:ssn

Enclosures

6996682_1

From: kmanuel@cebridge.net [mailto:kmanuel@cebridge.net]
Sent: Wednesday, February 21, 2007 10:46 AM
To: Elliott, Greg
Subject: Fwd: RE: G.D.E. bank (UNCLASSIFIED)

----- Original Message -----
From: 'Barlow, James A MVN' <James.A.Barlow@mvn02.usace.army.mil>
To: <kmanuel@cebridge.net>
Sent: Wed Feb 21 7:18
Subject: Fwd: RE: G.D.E. bank (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Kip;

There is not a problem with installing a game fence.

James A. Barlow, Jr.
Environmental Resource Specialist
US Army Corps of Engineers
New Orleans District
(504) 862-2250

-----Original Message-----
From: kmanuel@cebridge.net [kmanuel@cebridge.net',",",")">kmanuel@cebridge.net]
Sent: Friday, February 16, 2007 1:11 PM
To: Barlow; Barlow, James A MVN
Subject: RE: G.D.E. bank (UNCLASSIFIED)

Mr. Barlow Mr. Elliott is considering and will make a decision very soon.He also would like to install a game fence on some of the property and would like your opinion as the bank makes no reference to it in the present

EXHIBIT 1 - 01

form.Thanks Kip Manuel

On Thu Feb 15 7:49 , 'Barlow, James A MVN'
<James.A.Barlow@mvn02.usace.army.mil> sent:

Classification: UNCLASSIFIED
Caveats: NONE

Kip;

At this time, we can only extend mitigation credit to those areas that we
can, with some degree of certainty, identify as having the potential to be
restored as wetlands. We believe that approximately 278.3 acres in the 3
areas to be included in the bank potentially could be restored to wetlands.
However, after restoring site hydrology does in fact restore wetland soils,
vegetation and hydrology to other areas on the bank, we will release
additional mitigation based on the credits developed by these additional
areas. Revisiting the wetland status of those other areas is something we
should stipulate in the banking agreement if it's not already there.

Why can't we bargain? Mitigation guidance stipulates that non-wetlands can
not be used to compensate for unavoidable wetland impacts. It only allows
credit for non-wetlands as they add to the value of the restored wetlands
which is usually a very small incremental increase based on buffering the
site from non-compatible, adjacent land uses or increasing the bank size
above a minimal threshold. However, guidance does provide us the opportunity
to revisit the wetland status of the bank properties and extend additional
credits if areas previously determined not to be wetlands are later
determined to be wetlands.

If I could, I would allow you to sell 517.5 acres as mitigation. Hopefully
we can but, no guaranties beyond the 278.3 acres.

EXHIBIT 1 - 02

James A. Barlow, Jr.
Environmental Resource Specialist
US Army Corps of Engineers
New Orleans District
(504) 862-2250

-----Original Message-----
From: kmanuel@cebridge.net
kmanuel@cebridge.net',',',')>
[kmanuel@cebridge.net
',',',')">kmanuel@cebridge.net
kmanuel@cebridge.net',',',')>]
Sent: Wednesday, February 14, 2007 12:47 PM
To: Barlow, James A MVN
Subject: G.D.E. bank

Good afternoon Mr. Barlow I have presented the information to Mr. Elliott
and this is his proposal to the Corps for its consideration.Mr. Elliott would
be able to sell credits for 65% of the 517.5 total acres or 336 acres he
would also plant the balance of acres in hardwoods to the specs required in
the banking agreement and treat these plantings just like the 336 acres in
the bank for the potential to include them at a later date, if and when they
revert back to wetlands that the corps would find aceptable ,and allow more
credits to be sold.Mr. Elliott would also would like to install a game fence
for wildlife on a portion of the farm.Thank you for your consideration on
this matter.Kip Manuel

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

EXHIBIT 1 - 03

MITIGATION BANKING INSTRUMENT

G.D.E. Investments LA, LLC
Mitigation Bank

Bottomland Hardwood Restoration Project

Near Oakdale, Louisiana in Evangeline Parish

Sponsored By:

G.D.E. Investments LA, LLC

EXHIBIT 2 - 01

2) Assuring the availability of immovable property for agricultural, forest, recreational or open-space use;

3) Protecting natural resources;

4) Maintaining or enhancing air or water quality; or

5) Preserving the historical, archaeological or cultural aspects of unimproved immovable property.

3. **Financial Assurance:** The Sponsor shall establish the financial assurance stipulated in Section IX. The value of the account and the release of the escrow account are described in Section IX of this BI.

4. **Property Ownership:** The Sponsor shall provide a title search that identifies all known encumbrances including mortgages, liens, rights-of-way, servitudes, easements, etc. The Sponsor shall provide documentation that the conservation servitude is not subordinate to any other easement or major lien.

5. **Execution of BI:** The BI must be approved by all participant IRT agencies, as indicated by their signature on this BI; and

6. **Work Schedule:** Work to begin within one year of the initial sell of credits.

XI LONG-TERM MAINTENANCE AND PROTECTION

The Sponsor, or its heirs, assigns or purchasers shall be responsible for maintaining and protecting lands contained within the Bank in perpetuity, unless bank lands are transferred or sold to a state or federal resource agency or non-profit conservation organization. The conservation servitude (Attachment 3) shall incorporate this BI by reference and bind the Sponsor, its heirs, assigns, and future owners to complying with the terms of this copy of the BI. A copy of the conservation servitude to be filed in the real estate records of the Mortgage and Conveyance Office of Evangeline Parish shall be provided to CEMVN for review and approval prior to filing. After filing, a copy of the recorded conservation servitude, clearly showing the book, page and date of filing, will be provided to CEMVN.

A. Uses Prohibited by the Conservation Servitude:

1. Placing, filling, storing, or dumping of refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, or other such items on the Property.

2. Mechanized land clearing or deposition of soil, shell, rock or other fill on the Property without written authorization from CEMVN.

3. Cutting, removal or destruction of vegetation on the property except in accordance with Sponsor's timber management plan and/or in accordance with any permits authorized by the Corps of Engineers at the time the cutting is proposed. Timber harvests/thinning will only be approved if the IRT determines that such activities are needed to maintain or enhance the ecological value of the site.

4. Grazing of cattle or other livestock on the property.

5. Commercial, industrial, agricultural, or residential uses of the Property or partitioning by fencing without prior approval from the IRT.

6. Dredging, draining, ditching, damming or in any way altering the hydrology of the Property except as required or permitted by this BI.

7. All other activities, which the IRT determines to be inconsistent with the establishment, maintenance and protection of wetlands within the Bank and that may or may not be subject to Corps of Engineers regulatory authority.

B. Uses Allowed By the Conservation Servitude:

No other human activities that result in the material degradation of habitat within the Bank shall occur without written authorization from CEMVN. *However, it is understood that the conservation servitude shall not prohibit, subject to appropriate regulatory authority, hunting, fishing, trapping, non-consumptive recreational pursuits, exploration and production of minerals, and timber harvesting conducted for enhancing performance of wetland functions, subject to all applicable Federal, State and/or local licenses and permits and other provisions contained herein.*

1. Monitoring of vegetation, soils and water;

2. Hunting and fishing, and non-consumptive recreational uses such as hiking and bird watching;

3. Ecological education;

4. Exploration and production of minerals;

5. Provision of rights-of-way;

6. Timber harvesting as set forth herein; and

7. Compliance with Federal regulations or appropriate court orders.

EXHIBIT 2 - 03

Evangeline Parish Recording Page

Walter Lee
Clerk of Court
P.O. Drawer 347
Ville Platte, LA 70586
(337) 363-5671

Received From :
GDE INVESTMENTS L L C

First VENDOR
GDE INVESTMENTS LA L L C

First PURCHASER
CALCASIEU/MERMENTAU WETLND CHARITABLE TRUST

Index Type : Conveyances

File Number : 559707

Type of Document : Servitude Agreement

Book : 333 **Page :** 581

Recording Pages : 4

Recorded Information

I hereby certify that the attached document was filed for registry and recorded in the Clerk of Court's office for Evangeline Parish, Louisiana

On (Recorded Date) : 09/06/2007

At (Recorded Time) : 9:34:23AM

Doc ID - 000821330004

Return To :

Do not Detach this Recording Page from Original Document

AUG-01-2013 09:27 From:Manuel Hardware 3373535529 To:13374920012 Page:1/4

EXHIBIT 3 - 01

CONSERVATION SERVITUDE

UNITED STATES OF AMERICA

STATE OF LOUISIANA

PARISH OF LAFAYETTE

BE IT KNOWN, that on this 26 day of JUNE, 2007, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State and Parish aforesaid, and in the presence of the undersigned competent witnesses, personally came and appeared GDE Investments LA, L.L.C., a Louisiana limited liability company, who, after being duly sworn by me, Notary Public, (hereinafter "GRANTOR"), and who declares:

1. GRANTOR, in consideration of the mutual benefits to be derived in the establishment of the GDE Investments La, L.L.C. Mitigation Area and pursuant to L.R.S. 9.1271 et seq., do by these presents, grant, transfer, convey and deliver unto GRANTEE, The Calcasieu/Mermentau Wetland Charitable Trust (hereinafter "HOLDER"), with all legal warranties and with full subrogation and to all rights and actions in warranty which GRANTOR has or may have against all preceding owners and vendors, possession and delivery of a certain CONSERVATION SERVITUDE, in, on, over, upon and across the following described property:

   All of Section 9, less and except S ½ of S/W 1/4 T3S R2W
   N ½ of NE 1/4 Section 16 T3S R2W
   NW 1/4 and NW ¼ of NE 1/4 of N/W 1/4 of Section 15 T3 R2W
   Parish of Evangeline, State of Louisiana

2. GRANTOR warrants that it owns the PROPERTY in fee simple and that said PROPERTY is free from any mortgage, lien, judgment or encumbrance that will or may conflict with the purposes of this Conservation Servitude.

3. "HOLDER" is qualified to hold this Conservation Servitude by virtue of being:

   A charitable corporation, charitable association, or charitable trust, qualified under § 501 (c)(3) of the U.S. Internal Revenue Code, the purposes or powers of which include:

   1) retaining or protecting the natural, scenic, or open-space values of immovable property;
   2) assuring the availability of immovable property for agricultural, forest, recreational of open-space use;
   3) protecting natural resources;
   4) maintaining or enhancing air or water quality; or

AUG-01-2013 09:28 From:Manuel Hardware 3373635529 To:13374920812 Page:2/4

EXHIBIT 3 - 02

5) preserving the historical, archaeological or cultural aspects of unimproved immovable property.

4. Except as provided in the Mitigation Bank Interagency Agreement, a copy of which is attached hereto and made a part hereof, the property is henceforth set aside and reserved in its natural state, and GRANTOR will take no action or allow any action which diminishes the property's natural state or convert it to another use, which includes, but is not limited to construction of any structure or structures on said Property; the cutting, burning, removal or destruction of vegetation (including trees) on said Property; the placing of any material or objects on Property; the building of roads, trails or paths on said Property; changing the elevation of or contours of said Property; in any way pumping, draining or causing said Property to be drained; the grazing of animals on said Property; allowing commercial, industrial or agricultural activities on said Property; or any other activity inconsistent with preserving said Property's natural state, flora, fauna and/or wetland character. GRANTOR is not, however, required to perform any affirmative action to main said Property in its natural state. GRANTOR specifically reserves all rights to hunting, recreation, forest management, road maintenance, mineral ownership and exploration, high fence installation and such other land uses that are not in contravention of that certain Mitigation Bank Interagency Agreement.

5. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and Louisiana Department of Wildlife & Fisheries are granted third party rights of enforcement. HOLDER and those with third party rights of enforcement shall have the right to enter and go upon the PROPERTY for purposes of inspection, verifying compliance with their Servitude, and to enforce the provisions of this Servitude. No right of access or entry by the general public to any portion of the property is conveyed by this Servitude.

6. Should GRANTOR, its heirs and assigns, and all subsequent owners, purchases, lessees, grantees, and licensees fail to comply with the requirements of this Servitude, HOLDER and those with third party rights of enforcement may undertake legal proceedings to insure compliance. Among other relief, HOLDER and those with third party rights of enforcement may seek the complete restoration of any breach of this Servitude. Breaches of this Servitude may be actionable without notice. The costs of correcting a breach or costs of restoration, including expenses, court costs and attorneys' fees, shall be paid by the GRANTOR or its heirs and assigns, and all subsequent owners, purchases, lessees, grantees, and licensees. Enforcement shall be at the discretion of the HOLDER and those with third party rights of enforcement, and no omission or delay in acting shall constitute a waiver of any enforcement right. These enforcement rights are in addition to and shall not limit enforcement rights available under other provisions of law or equity, or under any applicable permit or certification.

AUG-01-2013 09:28 From:Manual Hardware 3373635529 To:13374920012 Page:3/4

EXHIBIT 3 - 03

7. This Conservation Servitude is transferable, but only to a qualified HOLDER as identified in Paragraph 3, above.

8. This Conservation Servitude is binding in perpetuity on GRANTOR, its heirs and assigns, and all subsequent owners, purchases, lessees, grantees, and licensees.

IN TESTIMONY WHEREOF, the parties hereto have signed, executed and acknowledged this instrument as their free and voluntary acts, in multiple originals, in the presence of the undersigned competent witness, and me, Notary Public, on this 28 day of June, 2007, at Lafayette, Louisiana.

WITNESSES:

Print Name: Kerry B. Irahan

Print Name: JEAN M FIKE

GRANTOR:

GDE INVESTMENTS LA, L.L.C.

By: Manager

NOTARY PUBLIC

Print Name:

Notary ID No.:

TF
Notary
My C
LA STATE BAR 7236

WITNESSES:

Print Name: Kerry B. Irahan

Print Name: JEAN M FIKE

GRANTEE:

The Calcasieu/Mermentau Wetland Charitable Trust

By: Trustee

NOTARY PUBLIC

Print Name:

Notary ID No.:

TED W. HOYT
Notary Public, Lafayette
State of Louisiana
My Commission is
LA STATE BAR 07036

AUG-01-2013 09:28 From:Manuel Hardware 3373635529 To:13374962012 Page:4/4

EXHIBIT 3 - 04

Evangeline Parish Recording Page

Walter Lee
Clerk of Court
P.O. Drawer 347
Ville Platte, LA 70586
(337) 363-5671

Received From :
GED INVESTMENTS LA LLC

First VENDOR
GDE INVESTMENTS LA LLC

First PURCHASER
CALCASIEU/MERMENTAU WETLAND CHARITABLE TRUST

Index Type : Conveyances

File Number : 567510

Type of Document : Servitude Agreement

Book : 349 **Page :** 429

Recording Pages : 3

Recorded Information

I hereby certify that the attached document was filed for registry and recorded in the Clerk of Court's office for Evangeline Parish, Louisiana

On (Recorded Date) : 08/15/2008

At (Recorded Time) : 10:20:31AM

Deputy Clerk

Doc ID - 001660490003

Return To :

Do not Detach this Recording Page from Original Document

EXHIBIT 3 - 05

AMENDMENT TO CONSERVATION SERVITUDE

UNITED STATES OF AMERICA

STATE OF LOUISIANA

PARISH OF LAFAYETTE

Be it known on this 15th day of August, 2008, before me, the undersigned Notary Public, duly commissioned and qualified in and for the State of Louisiana and in the presence of the undersigned competent witnesses, personally came and appeared:

GDE INVESTMENTS LA, L.L.C., a Louisiana Limited Liability Company (hereinafter referred to as "GRANTOR"), herein represented by Gregory Elliott, Managing Member, who, after being duly sworn by me, Notary Public, declared that:

On or about June 28, 2007 GRANTOR did sign a Conservation Servitude agreement establishing a Mitigation Area pursuant to L.R.S. 9:1271 et seq transferring certain properties to the CALCASIEU/MERMENTAU WETLAND CHARITABLE TRUST (hereinafter referred to as "HOLDER") certain properties located in Evangeline Parish, Louisiana. By this act GRANTOR and HOLDER do hereby amend the original Conservation Servitude to remove that portion of the property located in Section 15, T-3-S, R-2-W as shown on paragraph number 1 on said Conservation Servitude Agreement. Therefore, we the undersigned parties do hereby amend the original Conversation Servitude Agreement so that paragraph one shall read as follows, to wit:

1. GRANTOR, in consideration of the mutual benefit to be derived in the establishment of GDE Investments, La, L.L.C. Mitigation Area and pursuant to L.R.S. 9:1271 et seq., do by these presents, grant, transfer, convey and deliver unto GRANTEE, the Calcasieu/Mermentau Wetland Charitable Trust (hereinafter "HOLDER"), with all legal warranties and with full subrogation and to all rights and actions in warranty which GRANTOR has or may have against all preceding owners and vendors, possession and delivery of a certain CONSERVATION SERVITUDE, in, on, over, upon and across the following described property:

   All of Section 9, less and except S ½ of SW ¼ , T-3-S, R-2-W and N ½ and NE ¼ Section 16, T-3-S,. R-2-W,
   Parish of Evangeline, State of Louisiana

GRANTOR and HOLDER do hereby request that the Clerk of Court of Evangeline Parish indicate on the original Conservation Servitude which is recorded in Conveyance Book 559707 333 at page 581 of the records of the Evangeline Parish Clerk of Court this amendment to the original Conservation Servitude Agreement. Henceforth, the Conservation Servitude shall be amended as set forth herein.

EXHIBIT 3 - 06

THUS DONE AND SIGNED on the day, month and year first above written in the presence of the competent undersigned witnesses, and appearers, and me, Notary Public, after a due reading of the whole.

WITNESSES:

Printed Name: GEORGE KIPLING MANUEL

Printed Name: Jessica P. West

APPEARERS:

GDE INVESTMENTS LA, L.L.C. by Gregory Elliott, Managing Member

CALCASIEU/MERMENTA WETLAND CHARITABLE TRUST, by Gregory Elliott

NOTARY PUBLIC

Printed Name: Pamela Aucoin

Notary I.D. No.: Notary Public #35329

EXHIBIT 3 - 07

From: kmanuel@cebridge.net [mailto:kmanuel@cebridge.net]
Sent: Wednesday, June 27, 2007 10:11 AM
To: Elliott, Greg
Subject: Fwd: RE: G.D.E.Bank conservation servitude

He sems like an unhappy person.I was only trying to save the expense of recording and trouble of an ammended recording of they did not accept.Kip

----- Original Message -----
From: 'Northey, Robert D MVN'
To:
Sent: Thu Jun 14 15:18
Subject: Fwd: RE: G.D.E.Bank conservation servitude

James,
Did I already review his Louisiana Conservation Servitude?
Do you trust this guy enough to do the right thing, that the
conservation servitude will protect to credit lands in the manner we expect?
Will he file the conservation servitude as we provided him?
If so, then no, I don't want to see ahead of time. But....you NEED
for your Administrative Record a copy of the recorded servitude clearly
showing the recordation information. As that time, we can make sure the
servitude is appropriate.

Bob

ROBERT NORTHEY
OFFICE OF COUNSEL
504-862-2831

ATTORNEY-CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT
DO NOT RELEASE
DO NOT COPY
DO NOT FORWARD OUTSIDE OF USACE

-----Original Message-----
From: kmanuel@cebridge.net [kmanuel@cebridge.net',",",')">kmanuel@cebridge.net]
Sent: Wednesday, June 13, 2007 3:39 PM
To: Barlow, James A MVN
Subject: G.D.E.Bank conservation servitude

Good afternoon Mr. Barlow I have a draft of the servitude and Trust (which
you have seen).should I send a copy to you for review before recording and
there may be a small cloud on the title over thirty years ago that will be

EXHIBIT 4 - 01

worked out before recording b/c the servitude makes mention of the of clear title in paragraph 2. Let me know if you would like to see the draft before recording.Thanks Kip Manuel

EXHIBIT 4 - 02

Madeline Ahlgren

From:	Elliott, Greg
Sent:	Thursday, June 28, 2007 7:17 AM
To:	'kmanuel@cebridge.net'
Subject:	RE: RE: G.D.E.Bank conservation servitude

Kip,

I have a copy!

Just had the opportunity to see the article that Chris Fontenot wrote in the Gazette June 17th about my elephant hunt. Do you know who this is?

Thanks,

Greg Elliott
President- WORKSTRINGS, LLC
Toll Free: 1-888-978-7464
Phone: 337-989-9675
Cell: 337-298-6084
Fax: 337-492-0012
email: greg@workstrings.com
website: www.workstrings.com

message and any attachments accompanying it from Workstrings, L.L.C. is intended only for use by the addressee(s) shown above. It contains information that may be privileged, confidential and/or exempt from disclosure law. If you are not the intended recipient of this message, you are notified that copying, use, or distrubution of information transmitted in or with this message is strictly prohibited. If you received this message by mistake, please immediately call us at (337) 989-9675 and destroy the original message.

From: kmanuel@cebridge.net [mailto:kmanuel@cebridge.net]
Sent: Wednesday, June 27, 2007 3:59 PM
To: Elliott; Elliott, Greg
Subject: RE: RE: G.D.E.Bank conservation servitude

I just saw Brent sent me the docs. to forward to the corps. after I read them I will send you a copy also unless he sent them to you already.Kip

On Wed Jun 27 14:08 , 'Elliott, Greg' <Greg@workstrings.com> sent:

I will call Ted to execute the docs!

Greg Elliott
President- WORKSTRINGS, LLC
Toll Free: 1-888-978-7464

EXHIBIT 4 - 03

Phone: 337-989-9675
Cell: 337-298-6084
fax: 337-492-0012
email: greg@workstrings.com
website: www.workstrings.com

This message and any attachments accompanying it from Workstrings, L.L.C. is intended only for use by the addressee(s) shown above. It contains information that may be privileged, confidential and/or exempt from disclosure law. If you are not the intended recipient of this message, you are notified that copying, use, or distrubution of information transmitted in or with this message is strictly prohibited. If you received this message by mistake, please immediately call us at (337) 989-9675 and destroy the original message.

From: kmanuel@cebridge.net [mailto:kmanuel@cebridge.net]
Sent: Wednesday, June 27, 2007 12:47 PM
To: Elliott; Elliott, Greg
Subject: RE: RE: G.D.E.Bank conservation servitude

Greg I did tell you to wait to see if the corps wanted to see the draft but according to the lawyers statement they want to record it.I hope to get the title search to Barlow today or Thursday.I will try to find out something today.Kip

On Wed Jun 27 12:26 , 'Elliott, Greg' sent:

Kip,

I have not signed anything. Do I need to get with Ted and execute the document? I was thinking you told me to wait.

Please call my office and talk to Dawn regarding verification that escrow account has been opened? She handles all of this for me.

Greg Elliott
President- WORKSTRINGS, LLC
Toll Free: 1-888-978-7464
Phone: 337-989-9675
Cell: 337-298-6084
Fax: 337-492-0012
email: greg@workstrings.com
website: www.workstrings.com

This message and any attachments accompanying it from Workstrings, L.L.C. is intended only for use by the addressee(s) shown above. It contains information that may be privileged, confidential and/or exempt from disclosure law. If you are not the intended recipient of this message, you are notified that copying, use, or distrubution of information transmitted in or with this message is strictly prohibited. If you received this message by mistake, please immediately call us at (337) 989-9675 and destroy the original message.

EXHIBIT 4 - 04

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF

August 8, 2008

Operations Division
Regulatory Branch

SUBJECT: G.D.E. Investments La, L.L.C., Mitigation Bank

Mr. George Manuel
Arrowhead Realty
187 Robert Ave.
Ville Platte, LA 70586

Dear Mr. Manuel;

This responds to your request to remove the 60-acre tract located in Section 15, T3S, R2W from the G.D.E. Investments La, L.L.C., Mitigation Bank. The mitigation area, located northerly from Beaver, Louisiana, in Evangeline Parish, was established and operates in accordance with an interagency agreement (IA) signed by the District Engineer on April 23, 2007.

Upon reviewing your request and the IA, the New Orleans District, Corps of Engineers approves the removal of the 60-acre tract containing approximately 20 acres of bottomland hardwood restoration. This tract is identified in the IA as the "Wetland Delineation Map – Southeastern portion" (copy attached). With the exception of the changes below, all other terms and conditions of the IA remain in effect.

1. Section II – Location and ownership of the bank:

"The Bank encompasses approximately 457.3 ~~517.3~~ acres and is located off Louisiana State Highway 106 in the Community of Beaver approximately 5 miles west of Oakdale, and approximately 20 miles northwest of Ville Platte, Louisiana in Sections 5, 8, and 9 ~~and 16~~, T3S, R2W in Evangeline Parish (attachment 2a). With certainty, 258.3 ~~278.3~~ acres of the site can be restored to forested wetlands. Additional areas within the Bank will be planted and may eventually be restored to wetlands."

2. Attachment 2b – Southern Portion – deleted – the map illustrates the extent and the limits of potential wetlands on the 60-acre tract which is being removed from the bank property.

The recorded conservation servitude includes the portion of the bank that is being removed from the bank. Because of the title questions remaining on this tract, we recommend that the conservation servitude be revised to exclude this 60-acre tract. Should clear title be established in the future and you request that the banking instrument be amended to include this

EXHIBIT 5 - 01

tract, the conservation servitude can be revised to protect this tract.

Section X.F. of the IA lists those items required before we can authorize the use of the bank credits as compensation for adverse impacts associated with Department of the Army permits. All requirements have been met except for providing a recorded conservation servitude as amended above and possibly documentation necessary to assure that the conservation servitude is not subordinate to any other easement or major lien. Once provided, we can verbally approve the release of the credits and follow up with a letter to document the files.

This approval is made contingent on your acceptance of the changes to the IA as identified above. We appreciate your interest in conserving wetland resources. If we can be of further assistance regarding this matter, please call Dr. James A. Barlow, Jr. at (504) 862-2250 or e-mail him at james.a.barlow@usace.army.mil.

Sincerely,

James A. Barlow, Jr.

Pete J. Serio
Chief, Regulatory Branch

cc:

Mr. Greg Elliott
1150 Smede Highway
Broussard, Louisiana 70518

EXHIBIT 5 - 02

Wetland Delineation Map – Southeastern portion

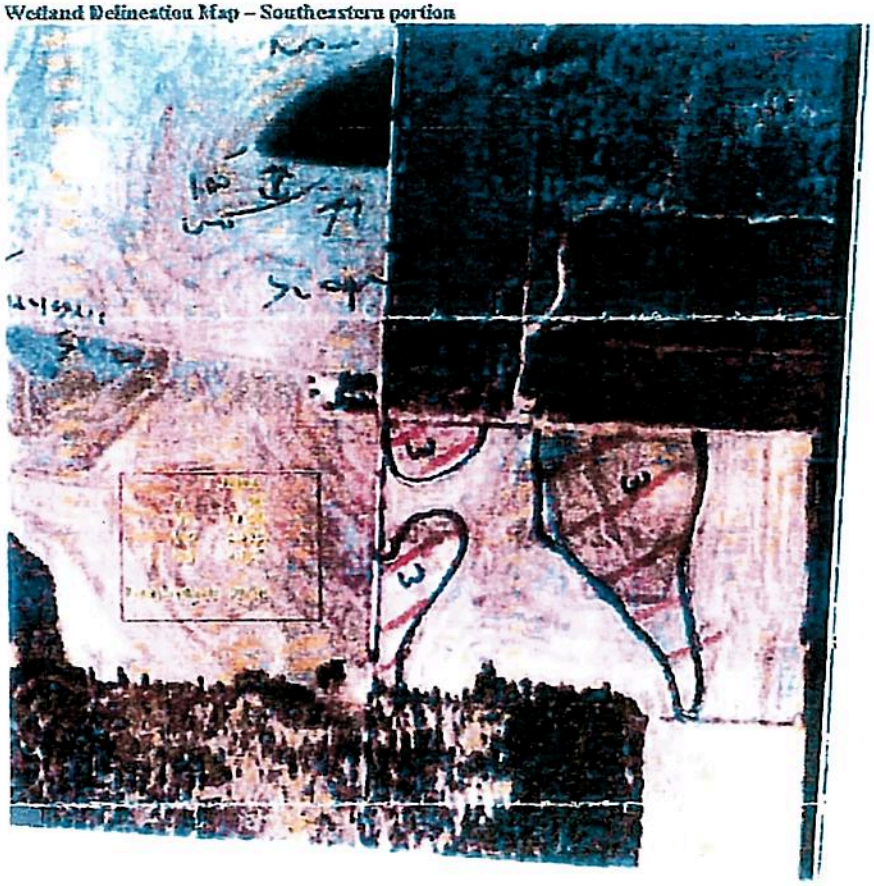


EXHIBIT 5 - 03

From:	Farabee, Jacqueline R [MR]
To:	"Holland, Patti"; "Balkum, Kyle"; "Bordelon, Seth"; "Tarrava Hicks"; "Gutierrez, Raul"; "Ettinger, John"
Subject:	Servitudes for GDE (UNCLASSIFIED)
Date:	Wednesday, September 12, 2012 11:43:00 AM
Attachments:	Servitude - Copy.pdf GDE conveyances.pdf amended CS.pdf

Classification: UNCLASSIFIED
Caveats: NONE

Please note on number 4 of the servitude that is states that the GRANTOR specifically reserves all rights to hunting, recreation, forest management, road maintenance, mineral ownership and exploration, high fence installation and such land uses that are not in contravention of that certain Mitigation Bank Interagency Agreement. As you can see the bank is enclosed by a high fence.

I will send photos in a separate e-mail.

Jacqueline Farabee
Environmental Resources Specialist
(504) 862-2595

Part of a World Class Workforce
Providing Consistent, Efficient, &
Effective Business Processes
to Serve the Nation.

Classification: UNCLASSIFIED
Caveats: NONE

EXHIBIT 6 - 01

Patti Holland

From: Patti Holland
Sent: Friday, May 31, 2013 1:56 PM
To: 'Farabee, Jacqueline R MVN'
Subject: RE: GDE non-compliance comments (UNCLASSIFIED)

Jac,

Assuming that the 278 credits was 100 percent of the credits available for the original acreage and assuming that the site is wet, I would not object to 50% of the credit in the recently restored areas of the original acreage and 75% of the credit in the acreage that has sufficient tree success, but needs TSI and exotic work. Once they do the pine and tallow work, they can get the other 25% on the acreage that was planted years ago. Once they get survival on the newly planted area, they can get 25% more on that acreage, and once they have 5 years growth and have proven that they don't have pine/tallow issues on that acreage, they can get the final 25%.

Does this make sense?

Patti

-----Original Message-----
From: Farabee, Jacqueline R MVN [mailto:Jacqueline.R.Farabee@usace.army.mil]
Sent: Thursday, May 30, 2013 7:12 AM
To: Patti Holland; Seth Bordelon; Raul Gutierrez; Ettinger, John; Balkum, Kyle
Subject: RE: GDE non-compliance comments (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Patti:

This bank had 278.3 credits released and have sold 73.3 credits. Credit sales have been suspended.

The owner is submitting a request for an additional 200 + acres to be added to the bank.

This is an older bank and the owner holds the servitude and a high fence was written into the banking agreement. If we agreed to the new acreage we would want a new servitude holder and no fence at least on the new addition.

There were "fire lanes" in the bank that the owner has now planted due to a meeting where we discussed additional problems with the bank and I mentioned the fire lanes, however the owner has not provided the species planted or set up plots in this area etc. There were ponds and food plots on the site also.

Once I receive the JD I plan to ask for the information to be presented in a format with maps showing the different planted areas by year, additional plot information with appropriate maps to show the locations, species information on the new plantings, a time schedule for future reports to be submitted, etc.

You stated that you could agree to a partial credit release, but what would you consider reasonable in a case like this.

acqueline Farabee
Environmental Resources Specialist

EXHIBIT 6 - 02

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEER
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF

JUL 08 2013

Operations Division
Surveillance and Enforcement Section

Mr. Greg Elliott
GDE Investments LA, LLC
1150 Smede Highway
Broussard, Louisiana 70518

Dear Mr. Elliott:

Reference is made to your request, for a U.S. Army Corps of Engineers' (Corps) jurisdictional determination on property located in Sections 9 and 16, Township 3 South, Range 2 West, Evangeline Parish, Louisiana (enclosed map). Specifically, this property is identified as a 408.1-acre tract that includes both the existing and proposed enlargement of GDE Investment LA, LLC Mitigation Bank.

Based on review of recent maps, aerial photography, soils data, the information provided with your request, and a brief field inspection on April 24, 2013, we have determined that part of the property is wetland and may be subject to Corps' jurisdiction. The approximate limits of the wetland are designated in red on the map. A Department of the Army permit under Section 404 of the Clean Water Act will be required prior to the deposition or redistribution of dredged or fill material into wetlands that are waters of the United States.

This delineation/determination has been conducted to identify the limits of the Corps' Clean Water Act jurisdiction for the particular site identified in your request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If the property owner or tenant is a USDA farm participant, or anticipates participation in USDA programs, a certified wetland determination should be requested from the local office of the Natural Resources Conservation Service prior to starting work.

You are advised that this preliminary jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision prior to the expiration date or the District Commander has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.

EXHIBIT 7 - 01

Should there be any questions concerning these matters, please contact Mr. Gary Couret at (337) 291-3042 or Mr. Brandon Gaspard at (504) 862-1280 and reference our Account No. MVN-2012-02973-SC. If you have specific questions regarding your permit application, please contact Ms. Jacqueline Farabee of our Special Projects and Policy Team at (504) 862-2595. The New Orleans District Regulatory Branch is committed to providing quality and timely service to our customers. In an effort to improve customer service, please complete the survey on our web site at http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

for Martin S. Mayer
Chief, Regulatory Branch

Enclosures

EXHIBIT 7 - 02

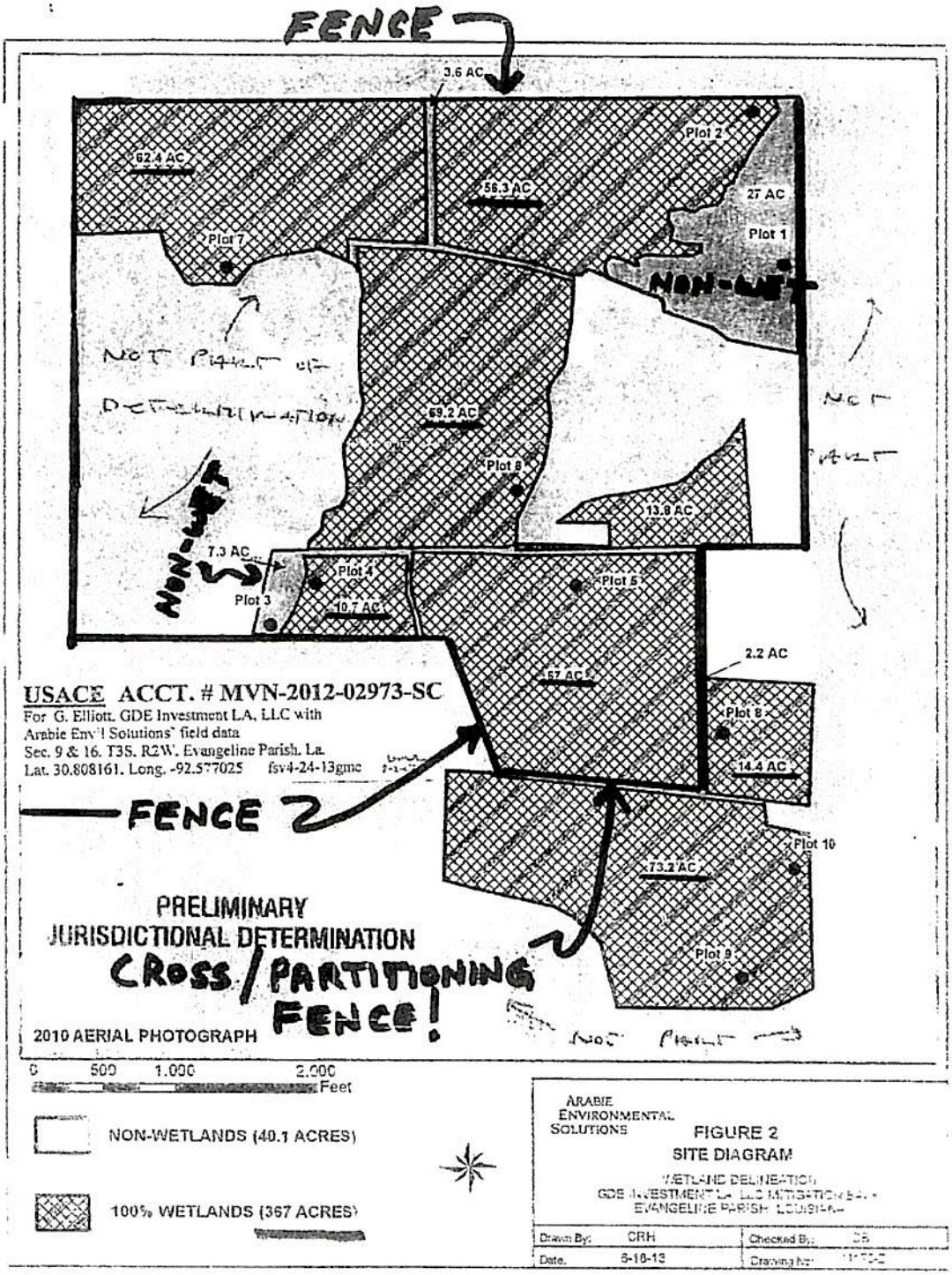

FENCE
3.6 AC
62.4 AC
58.3 AC
Plot 2
27 AC
Plot 1
Plot 7
NON-WET
NOT PART OF DETERMINATION
69.2 AC
Plot 6
13.8 AC
NON-WET
7.3 AC
Plot 4
Plot 3
10.7 AC
Plot 5
2.2 AC
57 AC
Plot 8
14.4 AC
USACE ACCT. # MVN-2012-02973-SC
For G. Elliott. GDE Investment LA, LLC with
Arabie Env'l Solutions' field data
Sec. 9 & 16. T3S. R2W. Evangeline Parish. La.
Lat. 30.808161. Long. -92.577025 fsv4-24-13gmc
FENCE 2
Plot 10
73.2 AC
PRELIMINARY
JURISDICTIONAL DETERMINATION
CROSS / PARTITIONING FENCE!
Plot 9
2010 AERIAL PHOTOGRAPH
0 500 1,000 2,000 Feet
NON-WETLANDS (40.1 ACRES)
100% WETLANDS (367 ACRES)
ARABIE ENVIRONMENTAL SOLUTIONS
FIGURE 2
SITE DIAGRAM
WETLAND DELINEATION
GDE INVESTMENT LA, LLC MITIGATION BANK
EVANGELINE PARISH, LOUISIANA
Drawn By: CRH
Checked By:
Date: 5-16-13

EXHIBIT 7 - 03