GDE Mitigation Bank LA, LLC
High Fence

Mr. Greg Elliott

October 22, 2015

PURPOSE

To inform the Mississippi Valley Division Commander, MG Wehr, of the background of the GDE Mitigation Bank LA, LLC high fence from the Owner's perspective so that the Corps may make a fully informed decision regarding the presence of the fence.

AGENDA

- PROBLEM STATEMENT
- RECOMMENDATION
- BACKGROUND
- FACTS BEARING ON THE PROBLEM
- DISCUSSION
- CONCLUSION
- RESTATED RECOMMENDATION
- QUESTIONS

PROBLEM STATEMENT

- The New Orleans District has unilaterally ordered Modification/ Termination of GDE Mitigation Bank without complying with the terms and conditions of the Mitigation Banking Instrument (MBI) [Section XIII and XIV] mutually signed and agreed to by the Corps, the Interagency Review Team, and the GDE Mitigation Bank.
- This order requires that GDE Mitigation Bank either remove its high game fence or close the majority portion of the bank that lies inside the game fence.
- This violates the MBI contract between the Corps and the GDE Mitigation Bank, threatens investments/future sales from the GDE Mitigation Bank
- Additionally, this removes a needed mitigation bank from the watershed involved, and reduces certainty intended by the MBI that would likely have a chilling effect on future investments by others in the mitigation banking industry.

RECOMMENDATION

- The New Orleans District should reconsider its decision to modify or terminate the MBI, since no significant change in policy or regulation or other such reason has occurred that would trigger a unilateral modification or termination of the MBI (MBI XIII and XIV).
- The New Orleans District should allow the high game fence to remain as constructed, since it is authorized by the MBI/Conservation Servitude, was approved by the Corps, and was constructed prior to the release and sale of credits.
- The New Orleans District should allow GDE Mitigation Bank to resume selling mitigation credits once all other non-fence related issues have been resolved.

BACKGROUND

- February 2007: Mr. Elliott, through his agent Kip Manuel, requested/received approval for a high fence from the New Orleans District (CEMVN) (May 22, 2015 letter to CEMVN, Exhibit B-3).
- April 2, 2007: Mr. Elliott requested/received approval for a high fence as constructed today from the CEMVN which included consultation with the IRT (May 22, 2015 letter to CEMVN, Exhibit B-1).
- April 23, 2007: Commander and District Engineer, CEMVN, signed the Mitigation Banking Instrument (MBI).
- September 1, 2007: The Conservation Servitude, which the New Orleans District approved and directed for execution per the MBI, specifically reserves the right of GDE Mitigation Bank to construct a high fence (paragraph 4) (May 22, 2015 letter to CEMVN, Exhibit A).

BACKGROUND

- Late Fall 2007: The high game fence was constructed in accordance with the prior approval of the IRT.

- August 8, 2008: GDE Mitigation Bank LA, LLC received a letter from the CEMVN, Chief of Regulatory Branch, requesting to remove a 60 acre tract from the GDE Bank due to title clearance issues with guidance to revise the recorded conservation servitude. This letter confirms the CEMVN was aware of the 2007 GDE Bank Conservation Servitude which reserved the right to install a game fence (May 22, 2015 letter to CEMVN, Exhibit B-14).

- Following construction, the Corps approved release of the 278.3 acres in the GDE Bank to be sold as mitigation credits.

- Subsequently, the Corps relied on mitigation credits from the GDE Bank when making Corps permit decisions between 2007 and 2012; approving permit applicant's to use 73.3 acres as mitigation credits in Corps permit decisions.

BACKGROUND

- July 11, 2012: First site visit of the GDE Bank post bank establishment by CEMVN Bank Manager. Also, agent Kip Manuel was present. Also, the CEMVN Bank Manager for the adjoining sold out Lonesome Dove Mitigation Bank was present. Both banks were toured and there was no mention that the game fence was an issue.

- July 13, 2012: GDE Mitigation Bank LA, LLC received a letter from the CEMVN Bank Manager regarding the July 11th site visit. This letter requested the dimensions of the fence line, yet did not list the high game fence as an issue of non-compliance (Exhibit 1).

- September 18, 2012: Received a non-compliance letter from CEMVN Chief of Regulatory Branch directing corrections. This letter referred to Sections V, VI, and VII of the MBI only. Prohibited uses are in Section X indicating that the Corps had not determined that the fence was a prohibited use at that time (Exhibit 2).

BACKGROUND

- September 12, 2012: E-mail found via FOIA request from the CEMVN Bank Manager to the IRT in which she stated "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 that are not in contravention of that certain mitigation bank interagency agreement. As you can see the bank is enclosed by a high fence." (May 22, 2015 letter to CEMVN, Exhibit B-15).
- July 13, 2012 – May 10, 2013: Received 3 list of compliance questions. No mention of game fence being an issue (Exhibit 1, 2 & 3).
- May 10, 2013: In a Corps-generated compliance chart, CEMVN used the high fenced area as a point of reference when describing the location of ponds the Corps requested removed and planted with appropriate species as stated in the MBI with no mention of the fence being non-compliant (Exhibit 3).

BACKGROUND

- May 30, 2013: E-mail found via FOIA request from the CEMVN Bank Manager to the IRT stating "This is an older bank and the owner holds the servitude and a high fence was written into the banking agreement." She further states, "If we agreed to the new acreage we would want a new servitude holder and no fence **at least on the new addition.**" (bold added) (May 22, 2015 letter to CEMVN, Exhibit B-16).
- July 22, 2013: Received 4th list of requirements from CEMVN Bank Manager with question #8 being the first mention that there was a concern with the game fence. This was 12 months after the 2012 site visit and much money was spent to answer various questions and perform site work to deal with compliance issues (Exhibit 4)

FACTS BEARING ON THE PROBLEM

- 73 credits were allowed to be sold from the GDE Bank from 2007-2012 with the game fence in place.
- In Louisiana, game fences are permitted and managed by the LA Department of Agriculture and Forestry. No animals within a game fence can be released into the wild. They would have to be transferred or slaughtered before the fence could be removed.
- GDE Mitigation Bank employs a consultant environmentalist and a wildlife biologist to manage the game within the carrying capacity of the ecosystem to maximize benefits and attain the goals of the mitigation bank.

FACTS BEARING ON THE PROBLEM

- With the bank's heavy cover, removing the deer humanely at this time would be practically impossible and would result in significant degradation of the wetlands value and resources invested in plantings.
- The current deer herd is being managed under LA Deer Hunting game laws. All hunts are donated to youth, wounded warriors, family, and friends.
- The fence keeps feral hogs from entering the GDE Bank and damaging the ecosystem.
- Small game travel through the fence at will.
- The positive environmental impact of the GDE Bank is not affected by the fence

FACTS BEARING ON THE PROBLEM

- Prior to the GDE Banks establishment in 2007 we had worked with the CEMVN Regulatory Specialist assigned to it in establishing an adjoining Lonesome Dove Mitigation Bank which was established in 1999. It is made up of 676 acres and the final credit was sold in April 2007, therefore we had a long working relationship with this CEMVN Regulatory Specialist.
- Southern deer do not migrate due to our mild winters.
- There are no black bear in Northwest Evangeline Parish or in the part of the state of the GDE Bank. Therefore no need to keep travel corridors open like in areas where black bears exist.

FACTS BEARING ON THE PROBLEM

- Under prohibited uses in the MBI it states, "Commercial, industrial, agricultural, or residential uses of the Property or partitioning by fencing without prior approval from the IRT." This clearly restricts partitioning fencing, but does not list perimeter fencing as a prohibited use.

- The common dictionary definition of partition, "to divide into parts of portions", and it is clear that this paragraph only prohibited fencing that would divide the Property into parts and not perimeter fencing.

FACTS BEARING ON THE PROBLEM

- In two separate cases, different Judges in the Court of Federal Claims have determined that Corps Mitigation Banking Instruments are considered contracts subjecting a party to pay damages for breach of contract.

- If this situation goes to litigation in the Claims Court and the Department of Justice decides to settles over the objection of the Corps, the settlement amount could come from Corps Regulatory Funds rather than the Judgment Fund.

- Should the Modification/Termination order stand, GDE Mitigation Bank would suffer significant financial loss exceeding $4.5 million from investments in the bank and lost revenue from the sale of future mitigation credits.

DISCUSSION

CONCLUSION

The administrative record for the GDE Investments LA, LLC Mitigation Bank clearly shows that:

- The Corps advised Mr. Elliott that a game fence was not a problem, including the cross fence on the southern portion of the mitigation bank;
- The Corps conducted itself from 2007 through mid-2013 in a manner, both through inspection protocols and e-mails among the IRT, which communicated that the game fence was authorized; and, that
- The Corps' current decision to request removal of the game fence is neither fair nor equitable treatment of Mr. Elliott's good faith efforts to establish and sustain his mitigation bank in accordance with the MBI.

RESTATED RECOMMENDATION

- The New Orleans District should reconsider its decision to modify or terminate the MBI, since no significant change in policy or regulation or other such reason has occurred that would trigger a unilateral modification or termination of the MBI (MBI XIII and XIV).
- The New Orleans District should allow the high game fence to remain as constructed, since it is authorized by the MBI/Conservation Servitude, was approved by the Corps, and was constructed prior to the release and sale of credits.
- The New Orleans District should allow GDE Mitigation Bank to resume selling mitigation credits once all other non-fence related issues have been resolved.

GDE Mitigation Bank LA, LLC
High Fence

Mr. Greg Elliott

October 22, 2015

PURPOSE

To inform the Mississippi Valley Division Commander, MG Wehr, of the background of the GDE Mitigation Bank LA, LLC high fence from the Owner's perspective so that the Corps may make a fully informed decision regarding the presence of the fence.

AGENDA

- PROBLEM STATEMENT
- RECOMMENDATION
- BACKGROUND
- FACTS BEARING ON THE PROBLEM
- DISCUSSION
- CONCLUSION
- RESTATED RECOMMENDATION
- QUESTIONS

PROBLEM STATEMENT

- The New Orleans District has unilaterally ordered Modification/ Termination of GDE Mitigation Bank without complying with the terms and conditions of the Mitigation Banking Instrument (MBI)

- This violates the MBI contract between the Corps and the GDE Mitigation Bank and threatens investments/future sales from the GDE Mitigation Bank

- Additionally, this removes a needed mitigation bank from the watershed involved, and reduces certainty intended by the MBI that would likely have a chilling effect on future investments by others in the mitigation banking industry.

RECOMMENDATION

- The New Orleans District should reconsider its decision to modify or terminate the MBI.
- The New Orleans District should allow the high game fence to remain as constructed
- The New Orleans District should allow GDE Mitigation Bank to resume selling mitigation credits once all other non-fence related issues have been resolved.

BACKGROUND

(1 of 5)

- February 2007: Requested/received approval for a high fence.

- April 2, 2007: Mr. Elliott requested/received approval for a high fence as constructed today.

- April 23, 2007: Commander and District Engineer, CEMVN, signed the Mitigation Banking Instrument (MBI).

- September 1, 2007: The Conservation Servitude specifically reserves the right of GDE Mitigation Bank to construct a high fence (paragraph 4).

BACKGROUND

(2 of 5)

- Late Fall 2007: The high game fence was constructed in accordance with the prior approval of the IRT.

- August 8, 2008: GDE Mitigation Bank LA, LLC received a letter with guidance to revise the recorded conservation servitude.

- Following fence construction, the Corps approved release of the 278.3 acres in the GDE Bank to be sold as mitigation credits.

- Corps relied on mitigation credits from the GDE Bank when making Corps permit decisions between 2007 and 2012.

BACKGROUND

(3 of 5)

- July 11, 2012: First site visit of the GDE Bank post bank establishment by Bank Manager.

- July 13, 2012: Received a letter from the Bank Manager regarding the July 11th site visit.

- September 8, 2012: Received a non-compliance letter directing corrections; no mention of the fence being non-compliant.

BACKGROUND

(4 of 5)

- September 12, 2012: E-mail from the Bank Manager to the IRT.
- July 13, 2012 – May 10, 2013: Received three lists of compliance questions. No mention of game fence being an issue.
- May 10, 2013: New Orleans District used the high fenced area as a point of reference with no mention of the fence being non-compliant.

BACKGROUND

(5 of 5)

- May 30, 2013: E-mail from the CEMVN Bank Manager to the IRT stating:
  - "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**." (bold added)

- July 22, 2013: Received fourth list of requirements from Bank Manager with question #8 being the first mention that there was a concern with the game fence.

FACTS BEARING ON THE PROBLEM

(1 of 4)

- Credits were allowed to be sold by the Corps.
- No animals within a game fence can be released into the wild.
- GDE Mitigation Bank employs a consultant environmentalist and a wildlife biologist to attain the goals of the mitigation bank.

FACTS BEARING ON THE PROBLEM

(2 of 4)

- Removing the fence as directed is impractical.

- The current deer herd is being managed under LA Deer Hunting game laws. → donated to youth (cow, bucks / fawns)

- The fence keeps out unwanted species destructive to the ecosystem.

- The positive environmental impact of the GDE Bank is not affected by the fence.

FACTS BEARING ON THE PROBLEM

(3 of 4)

- We had a long working relationship with the CEMVN Regulatory Specialist for the bank. LDMB 1999 approval

  James Barlow was in first 10-15 years

- The fence does not inhibit migratory species.

  ⇒ NO BB

  ⇒ deer don't migrate

- Perimeter fencing is not a prohibited use under the MBI.

  [illegible] "parkhoning"

FACTS BEARING ON THE PROBLEM

(4 of 4)

- Court of Federal Claims has determined that Corps Mitigation Banking Instruments are considered contracts.

  Does Wetlands Power Reserve

- Settlement amount could come from Corps Regulatory Funds rather than the Judgment Fund.

- GDE Mitigation Bank would suffer significant financial loss exceeding $4.5 million if current decision stands.

  will go to Claims court

DISCUSSION

CONCLUSION

The administrative record for the GDE Investments LA, LLC Mitigation Bank clearly shows that:

- The Corps approved the game fence;

- The Corps conducted itself from 2007 through mid-2013 in a manner, both through inspection protocols and e-mails among the IRT, which communicated that the game fence was authorized; and, that

- The Corps' current decision to request removal of the game fence is neither fair nor equitable.

RESTATED RECOMMENDATION

- The New Orleans District should reconsider its decision to modify or terminate the MBI.
- The New Orleans District should allow the high game fence to remain as constructed
- The New Orleans District should allow GDE Mitigation Bank to resume selling mitigation credits once all other non-fence related issues have been resolved.

MAY 22, 2015 GDE LETTER TO CEMVN

HARRISON
LAW, LLC

Andrew J. Harrison, Jr.
Madeline Ahlgren

Arnold W. Reitze, Jr.*
Of Counsel
*Admitted in DC

May 22, 2015

By U.S. Mail and Email

Aven Bruser, Esq.
Office of Counsel
U.S. Army Corps of Engineers
7400 Leake Ave.
New Orleans, LA 70160

Re: GDE Investments Mitigation Bank, LLC

Dear Aven:

In your email of April 28, 2015, you asked that we provide copies of emails and any other materials that would show that the District reviewed the Conservation Servitude for the GDE Investments Mitigation Bank.[1] I am attaching copies of documents obtained from the public records, from the client and through FOIA for your analysis with emphasis on short excerpts. Before you review those, however, please allow me to express a few thoughts.

We believe these documents represent exactly what Mr. Elliott stated during the meeting and demonstrate a high level of transparency on his part. First, the Conservation Servitude, prior to and as amended, states that "GRANTOR specifically reserves all rights to hunting . . . high fence installation and such other land uses that are not in contravention of that certain Mitigation Bank Interagency Agreement." *See* GDE Exhibit "A". Thus, pursuant to the Conservation Servitude, the installation of high fencing was unequivocally reserved.

Second, we also note it appears that (1) NOD mitigation personnel possessed and reviewed the Conservation Servitude prior to recordation; (2) the Office of Counsel thereafter declined to review a draft and ordered the filing of the servitude (though the Office of Counsel may have instead been declining to conduct a second review prior to filing); (3) review of the Conservation Servitude post recordation included presumably thorough analysis, even by the then Branch Chief, given the title issue on the 60 acres and the amendment thereto; (4) no objection to the high fence provision was expressed by NOD during development of the bank; and, in fact, (5) NOD specifically stated in 2007, "**There is not a problem with installing a game fence**". *Emphasis added.* These documents correspond with what Mr. Elliott said in our meeting. For instance, Mr. Elliott referred to the amendment of the Conservation Servitude. The amendment is referred to in Mr. Pete Serio's, Branch Chief, correspondence of August 8, 2008,

[1] The GDE Investments Mitigation Bank was established prior to the promulgation of the Mitigation Bank Rule of 2008. Thus, it is a Phase I bank and is not subject to the Rule.

ONE AMERICAN PLACE, SUITE 820 • BATON ROUGE, LOUISIANA 70825
PHONE 225-388-0065 • FAX 225-388-0501 • E-MAIL: ajh@harrisonlawllc.com

when he stated "**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 . . . **All requirements have been met except for providing a recorded conservation servitude *as amended above* . . .**". *Emphasis added.*

We also find interesting the Office of Counsel's directive to first record the servitude and then to evaluate it. Actually, given Bob Northey's question – "James, Did I already review his Louisiana Conservation Servitude?" - it appears the servitude had not only already been reviewed by NOD Mitigation but also by the Office of Counsel without objection to the reservation of "high fence installation". Nevertheless, it appears highly likely that the servitude was extensively reviewed after recording due to the issue of the title on 60 acres which Mr. Serio ultimately directed be removed from the mitigation bank as well as Mr. Northey's comment that he can review the servitude after filing.

With regard to fences elsewhere, please see attached photographs recently taken of the Banks Family Farm Mitigation Bank in Richland Parish. The Banks Family Farm Mitigation Bank consists of two phases. Phase I is a 1,296 acre tract with 560 acres of mitigation. Phase II is an additional 447.11 acres. It is our understanding that Phase I of this bank is surrounded by a high fence which encloses even more acreage than the bank itself, and the bank in its entirety. The photos show that it is a "game fence" or "high fence" depending upon your preferred terminology. It cannot be disputed that the Banks Family Farm Mitigation Bank is surrounded by high fence. At the time of establishment, like GDE's, the interagency agreements did not prohibit high fences.

We believe the submissions made to date, as well as our discussions, support Mr. Elliott's respectful requests that MVN withdraw its objection to the fence, lift the suspension of GDE Investment Mitigation Bank and reinstate sales. Since the bank has been in suspension for nearly three (3) years, we respectfully request a decision by the Colonel as soon as possible. Though we consider it an unnecessary concession on the part of Mr. Elliott, we request NOD to express its response on Mr. Elliott's proposal of the addition of the 120 acres (not within the fence and without additional credit) to offset a perceived, though not real, non-compliance.

The following correspondences relate to the above and are submitted in response to your request as exhibits:

B-1) Email from James Barlow, NOD, to Kip Manuel, Mr. Elliott's consultant, and copying Patti Holland (USFWS), Kyle Balkum (LADWF) and John Ettinger (EPA-MVN), dated April 2, 2007:

> "(2) Also on section XI[.]A.5 Mr. Elliott would like to install a game fence and have a border fence that would cross going East to West at about the dividing line from the north part from the newer south part. Looking at the map (page 30) it would cross 3- small

pieces of wetland portions in the bank and then go to the wooded acres. Can the banking agreement be changed to show this[?]

I don't think the agencies will take issue with the fencing. However, I will copy them on this e-mail to get their input. Revising the banking instrument at this time will result in delaying approval of the bank. I have signatures from the U.S. Fish and Wildlife Service and the Louisiana Department of Wildlife and Fisheries approving the banking instrument and EPA says their signature page is on the way.

The only potential problem I see with the installation of fencing is [] that it may result in areas not being planted. If installation of the fence results in a reduction in planted area, we can modify the banking instrument with an approval letter to explain why the acreage amount has been reduced."

Copies of this email were obtained through FOIA from the U.S. Army Corps of Engineers and the U.S. Fish & Wildlife Service. We have enclosed the copy obtained from the FWS because it contains hand-written notes which state:

"Recollection of conversation on (Assumed date)-4/24
Spoke with James about game fence. Told him we oppose it, but since we have already signed it, it's his call'
An arrow points to the handwritten notes along with other notes which state "Added notation Below in Response to Corps inquiry on May 21/13"

B-2) Email from Kip Manuel to James Barlow dated February 16, 2007 advising:

"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."

B-3) Email from James Barlow to Kip Manuel dated February 21, 2007 advising:

"Kip;

There is not a problem with installing a game fence." *Emphasis added.*

B-4) Email correspondence from James Barlow to Kip Manuel, April 16, 2007 (at bottom):

"Got the signature page and sent it up to Col Wagenaar Friday for his signature. Hopefully we'll know something later this week. Before we can begin using the bank, you need to provide the following:

1. Conservation Servitude...."

B-5) Email correspondence from James Barlow to Kip Manuel, May 30, 2007:

"Kip;

Sorry to not have responded sooner but we have had an ongoing discussion relative to the trust document and holder of the Conservation Servitude...We have some concern with the holder of the conservation servitude being four states away. The holder has the responsibility of holding and enforcing the conservation servitude placed on those lands within the Bank subject to the recorded conservation servitude so that mitigation banks lands are protected in perpetuity."

B-6) Email correspondence from Kip Manuel to James Barlow, June 13, 2007:

"Good afternoon Mr. Barlow I have a draft of the conservation 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 worked out before recording b/c the servitude makes mention of the clear title in paragraph 2. []Let me know if you would like to see the draft before recording."

B-7) Email correspondence dated June 14, 2007, written by Robert D. Northey, **Office of Counsel**. Subject line says "G.D.E.[]Bank conservation servitude". There is no addressee; however, the author directs his comments to "James" as follows:

"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 [the] 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. **At that time, we can make sure the servitude is appropriate.**

Bob" *Emphasis added.*

B-8) Email correspondence dated June 27, 2007, from Kip Manuel to Greg Elliott forwarding Mr. Northey's email, referred to above. The subject line remains "G.D.E.[]Bank conservation servitude":

". . . I was only trying to save the expense of recording and trouble of an amended recording if they did not accept. []Kip[.]"

B-9) Email correspondence from Greg Elliott to Kip Manuel, June 27, 2007:

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

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

B-10) Email correspondence from Kip Manuel to Greg Elliott, June 27, 2007:

"Greg I did tell you to wait to see if the corps wanted to see the draft but according to the lawyer[]s 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."

B-11) Email correspondence from Greg Elliott to Kip Manuel, June 27, 2007:

"I will call Ted to execute the docs!"

B-12) Email correspondence from Kip Manuel to Greg Elliott, June 27, 2007:

"I just saw Brent sent me the docs to forward to the corps. [A]fter I read them[,] I will send you a copy also unless he sent them to you already. []Kip."

B-13) Email correspondence from Kip Manuel to Greg Elliott, dated August 7, 2008 stating:

"Good morning Greg[.] Hope you are having a good trip. The Charitable Trust and Conservation Servitude and a Certificate of Mortgage showing no liens or easements were sent to the corps certified mail on March 06,[]2007.[]The trust and servitude were prepared by Ted Hoyt,[]and I recorded and sent them the true copy from the Clerk of Court office.[]They have this in a file but as he said it could be in the legal dept. I will send copies of this to Barlow today.[]If you do not have copies I will get them to you when you get back.[]Kip."

B-14) Correspondence from Pete J. Serio to Kip Manuel, August 8, 2008:

[last paragraph, first page] "**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 . . . **All requirements have been met except for providing a recorded conservation servitude as amended above** . . . " *Emphasis added.*

B-15) Skipping forward to September 12, 2012, see below excerpt from Jacqueline Farabee's, NOD, email to the IRT, properly stating terms of the Conservation Servitude:

"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 that are not in contravention of that certain Mitigation Bank [I]interagency Agreement. As you can see the bank is enclosed by a high fence." *Emphasis* Added.

B-16) May 30, 2013, see below correspondence from Jacqueline Farabee, NOD, to the members of the IRT stating, in part:

"This is an older bank and the owner holds the servitude and a high fence was written into the banking agreement."

B-17) Lastly, someone questioned whether there are any other mitigation banks which have game fences. Attached as "p" are photos of a game fence we understand completely surrounds the Banks Family Farms Phase I. The fence also encloses a larger area. We have no objection to the fence on Banks Family Farms but thought it would be useful for you to see the fence.

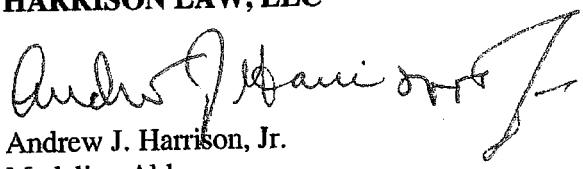
In addition to the above, we would like to remind you that GDE continues to implement the Adaptive Management Plan submitted to the Corps. GDE is 90% complete and expects to complete this work under the AMP this summer.

Again, we respectfully request withdrawal of the objection to the fence, termination of the suspension and reinstatement of sales.

Thanks to all in advance for your serious consideration of this information as well as previously provided materials.

With kindest personal regards, I remain

Sincerely,
HARRISON LAW, LLC



Andrew J. Harrison, Jr.
Madeline Ahlgren

cc: Senator David Vitter
Colonel Richard L. Hansen, District Commander
Stephan Roth, Esq., District Counsel
Mr. Charles Brittingham
Mr. Martin Mayer, Branch Chief, Regulatory Branch
Ms. Jacqueline Farabee, Regulatory Branch

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

CR
Deputy Clerk

Doc ID - 000821330004

Return To :

Do not Detach this Recording Page from Original Document

EXHIBIT
A

CONSERVATION SERVITUDE

UNITED STATES OF AMERICA

STATE OF LOUISIANA

PARISH OF LAFAYETTE

BE IT KNOWN, that on this 28 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 ½ 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

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.

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 STAR BAR 7036

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.~~:

ED W. HOYT

Public, Lafayett

State of Louisi

My Commission is

LA STATE BAR 07036

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

CR
Deputy Clerk

Doc ID - 001660490003

Return To :

Do not Detach this Recording Page from Original Document

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 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.

559707

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:

George Kipling Manuel

Printed Name: GEORGE KIPLING MANUEL

Printed Name: Jessica P. West

APPEARERS:

Greg Elliott

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

Greg Elliott

CALCASIEU/MERMENTA WETLAND CHARITABLE TRUST, by Gregory Elliott

Pamela Aucoin

NOTARY PUBLIC

Printed Name: Pamela Aucoin

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

EXHIBIT
B-1

"Barlow, James A MVN"
<James.A.Barlow@mvn02.usace.army.mil>
04/02/2007 09:48 AM

To <kmanuel@cebridge.net>
cc <Patti_Holland@fws.gov>, <kbaham@wlf.louisiana.gov>, "Ettinger, John F MVN-Contractor" <John.F.Ettinger@mvn02.usace.army.mil>
bcc
Subject RE: G.D.E. Bank

Kip;

Sorry about not responding to your e-mail but I've been busy with other issues and have been slow to respond to last week's e-mails. In response:

(1) Can we sign the agreement before the 4-items you wanted are finished (i.e.) the Conservation Servitude, escrow acct. and mortgage free cert?

Yes, you can sign the agreement prior to providing those items. The Conservation Servitude, escrow acct. and mortgage free cert will be necessary before we can release credits.

(2) Also on section XI A.5 Mr. Elliott would like to install a game fence and have a border fence that would cross going East to West at about the dividing line from the north part from the newer south part. Looking at the map (page 30) it would cross 3- small pieces of wetland portions in the bank and then go to the wooded acres. Can the banking agreement be changed to show this.

I don't think the agencies will take issue with the fencing. However, I will copy them on this e-mail to get their input. Revising the banking instrument at this time will result in delaying approval of the bank. I have signatures from U.S. Fish and Wildlife Service and the Louisiana Department of Wildlife and Fisheries approving the banking instrument and EPA says their signature page is on the way.

The only potential problem I see with the installation of fencing is that it may result in areas not being planted. If installation of the fence results in a reduction in planted area, we can modify the banking instrument with an approval letter to explain why the acreage amount has been reduced.

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

----- Message from <kmanuel@cebridge.net> on Mon, 2 Apr 2007 08:05:01 -0500 -----

To: "Barlow, James A MVN" <James.A.Barlow@mvn02.usace.army.mil>

Subject: Fwd: G.D.E. Bank

Good morning sending this in case you missed it the first time.Thanks Kip

Recollection of Conversation on (Assumed date) - 4/24

Spoke w James about game fence. Told him we oppose it, but since we have already signed it, it's his call

Added Notation Below in Response to Corps inquiry on May 21, 12

----- Original Message -----

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.

EXHIBIT
B-3

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
B-2

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.

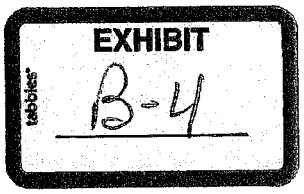
-----Original Message-----
From: kmanuel@cebridge.net [mailto:kmanuel@cebridge.net]
Sent: Monday, April 16, 2007 3:11 PM
To: Elliott, Greg
Subject: Fwd: RE: G.D.E. bank

I had mailed your sig. page and mortgage cert. and e-mailed a draft of the trust papers from Ted before Easter.Gave him a week and today at noon e-mailed him.This is his response.He did not respond to the trust papers and if item number # 3 is not satisified with what I sent him I will have to get Linda to do a more thourgh title search.He told me a while back he was getting busy with something else looks like he missed the e-mail and brushed over the letter.I will try to call him in the morning and also Ted but Ted is kinda waiting on approval of his work from Barlow. Greg no one is waiting on you and I wll try to get some answers for you Tuesday sorry I know you are getting frustrated but I hope it almost done.Can you get some kind of paper from your banker that shows he is ready for the escrow account.Thanks Kip

msg-8506-17.txt (0.1 Kb) attached

----- Original Message -----
From: 'Barlow, James A MVN' <James.A.Barlow@mvn02.usace.army.mil>
To: <kmanuel@cebridge.net>
Sent: Mon Apr 16 13:56
Subject: Fwd: RE: G.D.E. bank

Got the signature page and sent it up to Col Wagenaar Friday for his signature. Hopefully we'll know something later this week. Before we can begin using the bank, you need to provide the following:



1. Conservation Servitude: The Sponsor shall execute a conservation servitude (pursuant to the Louisiana Conservation Servitude Act, R.S. 9:1271 et seq.) substantially in the form attached hereto as Attachment F and record it in the Mortgage and Conveyances Records Office of Evangeline Parish.

2. 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.

3. 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.

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

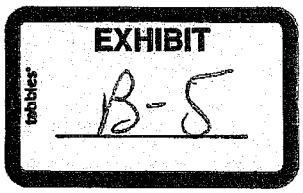
Madeline Ahlgren

From:	kmanuel@cebridge.net
Sent:	Wednesday, May 30, 2007 2:45 PM
To:	Elliott, Greg
Subject:	Fwd: RE: G.D.E. Bank
Attachments:	26274-msg-20214-7.txt

I guess this is in ref. to your out of state address.

msg-20214-7.txt (0.4 Kb) attached

----- Original Message -----
From: 'Barlow, James A MVN' <James.A.Barlow@mvn02.usace.army.mil>
To: <kmanuel@cebridge.net>
Sent: Wed May 30 7:56
Subject: Fwd: RE: G.D.E. Bank



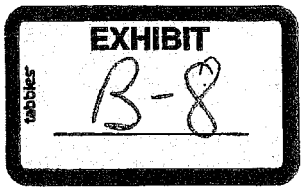
Kip;

Sorry to not have responded sooner but we have had an ongoing discussion relative to the trust document and holder of the Conservation Servitude. The trust document looks okay. However, it must be executed under Louisiana Law under Authentic Act. We have some concern with the holder of the conservation servitude being four states away. The holder has the responsibility of holding and enforcing the conservation servitude placed on those lands within the Bank subject to the recorded conservation servitude so that mitigation bank lands are protected in perpetuity. That may prove difficult being so far away. However, if the holder understands his responsibilities regarding the protection of the property, we can accept him as holder.

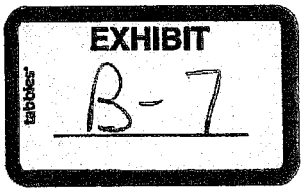
James A. Barlow, Jr.
Environmental Resource Specialist
US Army Corps of Engineers
New Orleans District
(504) 862-2250

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



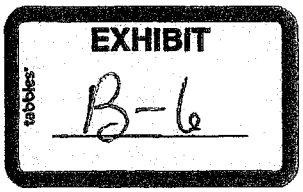
James,
Did I already review his Louisiana Conservation Servitude?
Do you trust this guy enough to do the right thing, that the conservation servitude will protect to credit lands in the manner we expect?
Will he file the conservation servitude as we provided him?
If so, then no, I don't want to see ahead 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

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

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

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
B-12

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

EXHIBIT
B-11

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

I will call Ted to execute the docs!

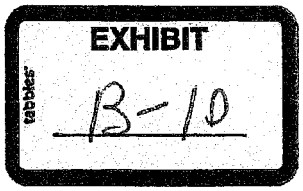
Greg Elliott
President- WORKSTRINGS, LLC
Toll Free: 1-888-978-7464

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

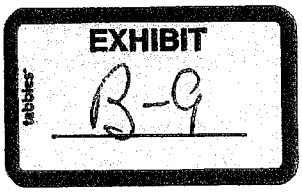


On Wed Jun 27 12:26 , 'Elliott, Greg' sent:

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.

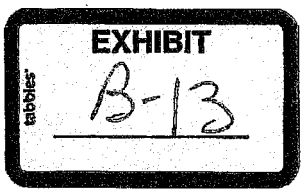


Greg Elliott
President- WORKSTRINGS, LLC
Toll Free: 1-888-978-7464
Phone: 337-989-9675
Cell: 337-298-6084
Fax: 337-492-0012
email: greg@workstrings.com
website: www.workstrings.com

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.

Madeline Ahlgren

From: Elliott, Greg
Sent: Thursday, August 07, 2008 7:26 AM
To: 'kmanuel@cebridge.net'
Subject: Re: G.D.E. Bank



Ok

----- Original Message -----
From: kmanuel@cebridge.net <kmanuel@cebridge.net>
To: Elliott, Greg
Sent: Thu Aug 07 07:24:18 2008
Subject: G.D.E. Bank

Good morning Greg Hope you are having a good trip. The Charitable Trust and Conservation Servitude and a Certificate of Mortgage showing no liens or easements were sent to the corps certified mail on March 06,2007.The trust and servitude were prepared by Ted Hoyt ,and I recorded and sent them the true copy from the Clerk of Court office.They have this in a file but as he said it could be in the legal dept. I will send copies of this to Barlow today.If you do not have copies I will get them to you when you get back.Kip

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
B-14

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.
for Pete J. Serio
Chief, Regulatory Branch

cc:

Mr. Greg Elliott
1150 Smede Highway
Broussard, Louisiana 70518

Wetland Delineation Map – Southeastern portion

From: Farabee, Jacqueline R HVN
To: "Holland, Patti"; "Balkum, Kyle"; "Bordelon, Seth"; "Tamara Nick"; "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.

EXHIBIT
B-15

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

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

EXHIBIT
B-16

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.

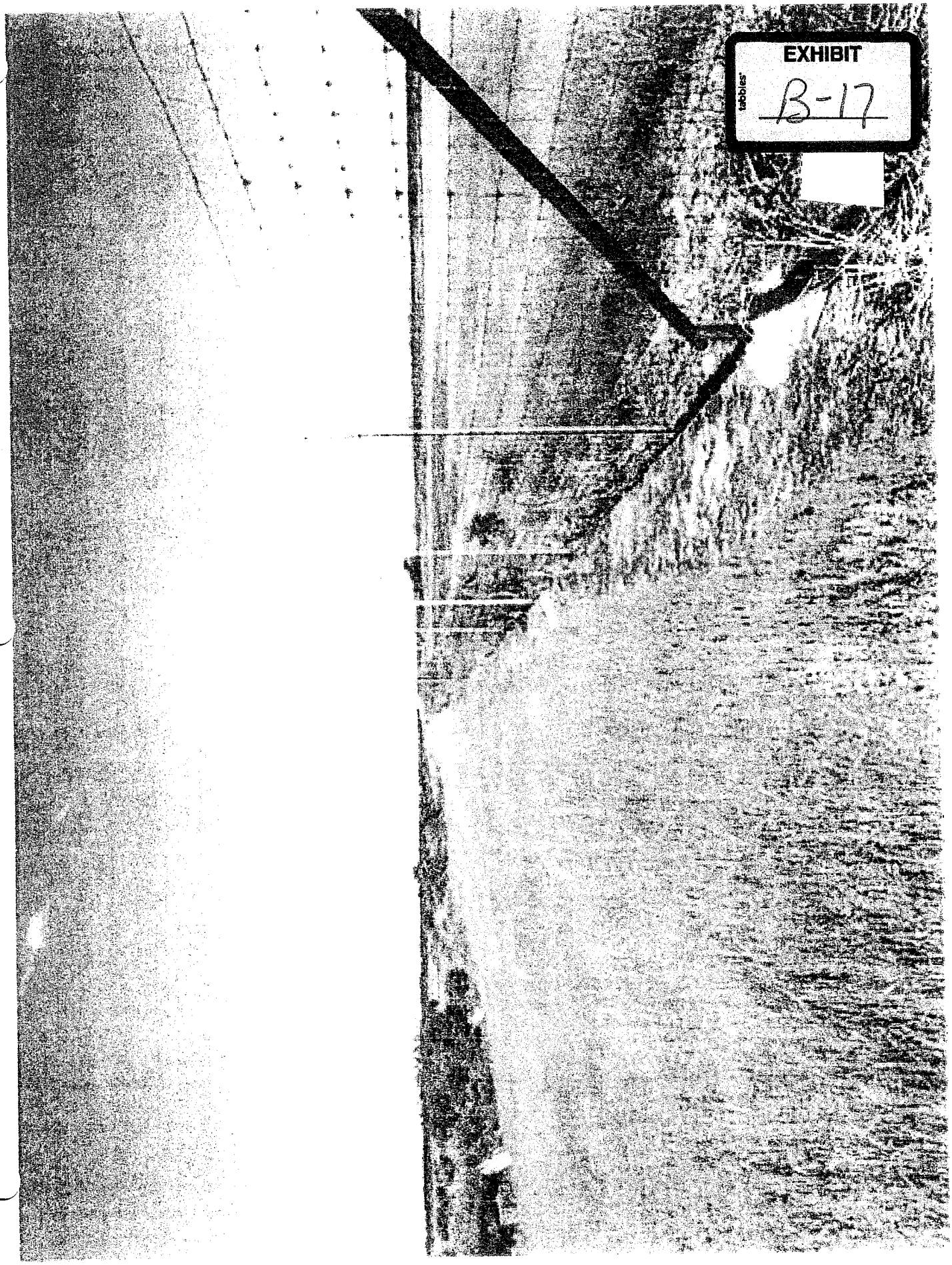
This is an older bank and the owner holds the servitude and a high fence was written into the banking agreement. If we agreed to the new acreage we would want a new servitude holder and no fence at least on the new addition.

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.

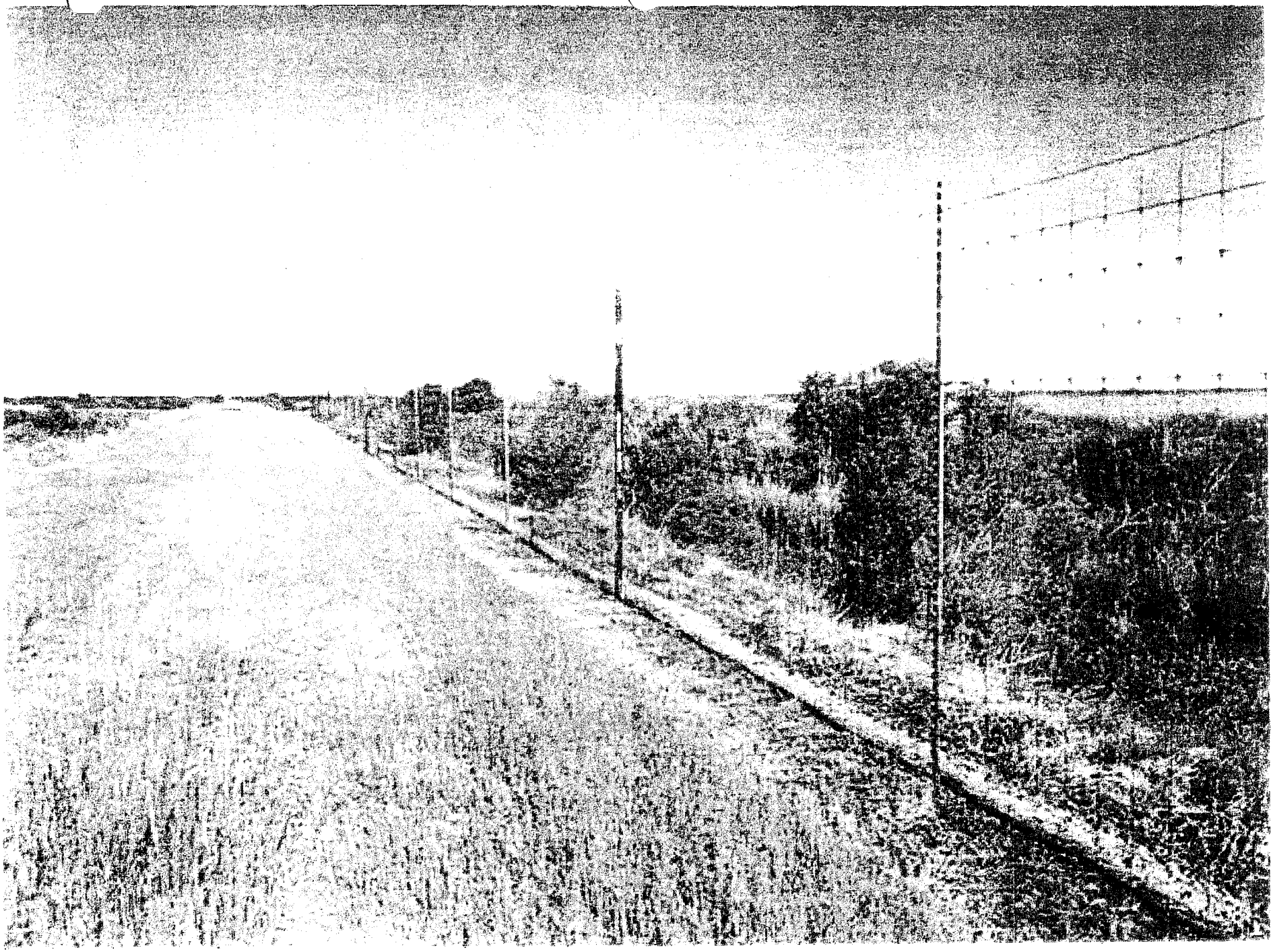
Jacqueline Farabee
Environmental Resources Specialist

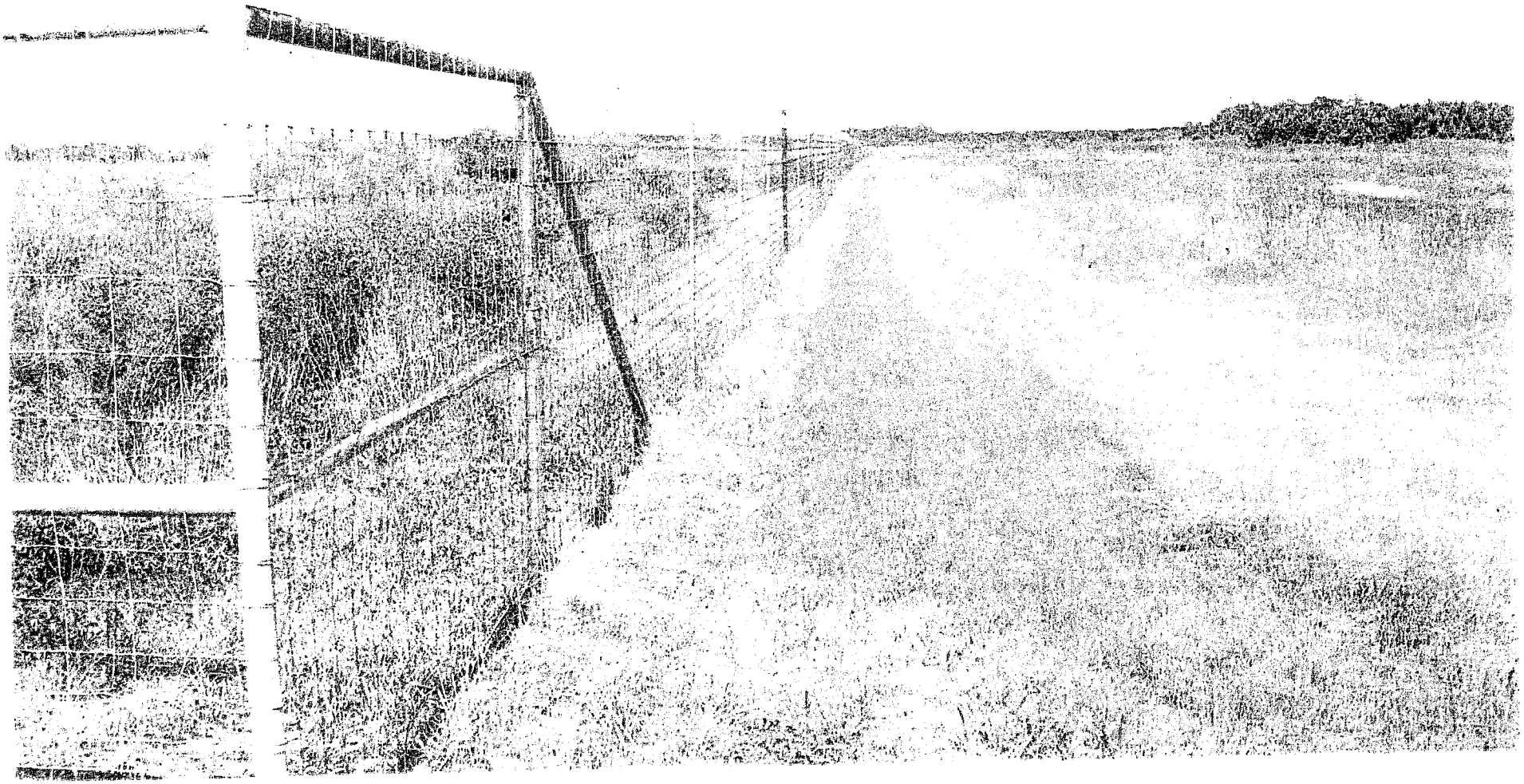


EXHIBIT

tabbies

B-17





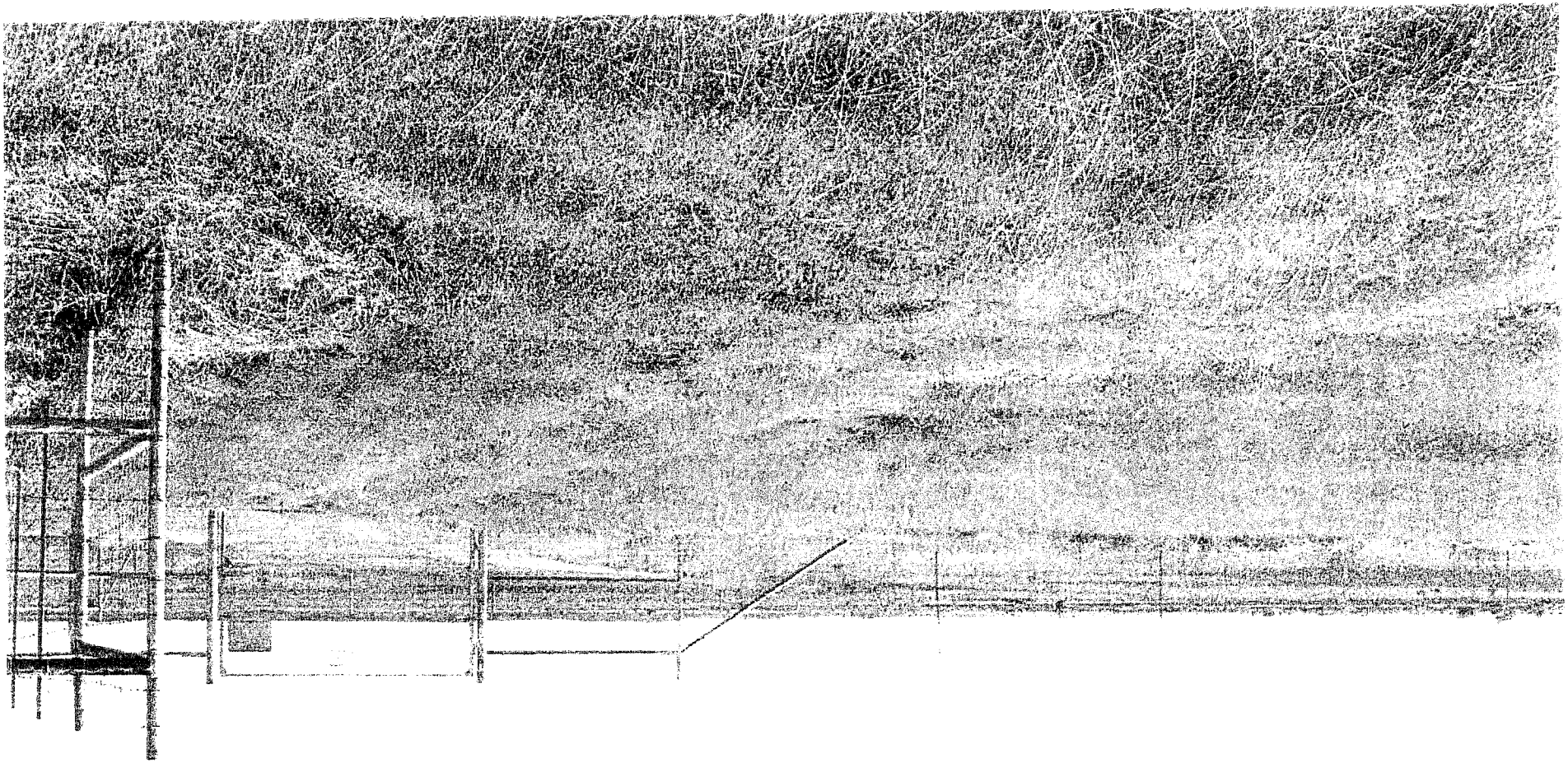


EXHIBIT 1

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

REPLY TO
ATTENTION OF

July 13, 2012

Operations Division
Regulatory Branch

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

G.D.E. Investments, LA, LLC
1150 Smede Highway
Broussard, Louisiana 70518

Gentlemen:

This letter is in response to our site visit conducted on July 11, 2012, of the G.D.E. Mitigation Bank, located in Evangeline Parish, near the community of Oakdale, Louisiana, in Sections 5, 8, 9 & 16, T3S-R2W.

Upon review of the file (and noted during the site visit), we have not received any monitoring reports, as described on pages seven through nine of the G.D.E. Mitigation Banking Instrument (MBI) (Section VI.) which was signed on April 23, 2007. This information is needed to assess bank progression toward achieving the overall goal of re-establishing a high quality bottomland hardwood forested wetland to date. At this time we are requesting the following information:

1. A written report indicating the number and species of surviving seedlings in each survey plot as well as colonization by volunteer mid-story and overstory species.

2. The report shall also describe the condition of applicable hydrology altering features (culverts, ditches, plugs etc), the general conditions of the seedlings and discuss likely causes for observed mortality within those tracts that did not exhibit a seedling survival rate as indicated by the success criteria.

3. In the report please identify the generalized degree and location of exotic/invasive species colonization and identify measures to eradicate them.

4. The report shall also include visual estimates of percentage (%) overall cover and % cover by each vegetation layer, species diversity, % exotic vegetation in each vegetation layer, total % "facultative" and total % "upland" species in each vegetation layer, survival rate of planted vegetation, an estimate of natural revegetation, and a qualitative estimate of plant vigor as measured by evidence of reproduction.

5. An aerial map of the site on which each of the following is clearly denoted and labeled:
   a. Each planted (i.e., reforested) plot of the bank. Please indicate date of planting and acreage for each plot.
   b. Show all fire lines. Please give length and width of each fire lane and a summation of acreage for all fire lanes.

c. Show all farmed areas (food plots etc.) and give the dimensions and acreage of each area.
d. Show all watering areas such as ponds, small watering holes etc. and give the dimensions and acreage for each.
e. Delineate the fence line giving the height and length of each section
f. Show any enclosed areas within the bank.
g. Provide GPS points for each of the above.

We are requesting that you provide a response within twenty five days of the date of this letter. We appreciate your cooperation in bringing the bank into compliance with the terms of the MBI. If you have any questions or require any further assistance, please contact me at (504) 862-2292 or Jacqueline.R.Farabee@usace.army.mil.

Sincerely,

Jacqueline Farabee

Jacqueline Farabee
Environmental Resources Specialist

EXHIBIT 2

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

REPLY TO
ATTENTION OF

September 18, 2012

Operations Division
Regulatory Branch

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

G.D.E. Investments LA LLC
1150 Smede Highway
Broussard, Louisiana 70518

Gentlemen:

This letter is in response to the August 16, 2012 monitoring report submitted for the G.D.E. Mitigation Bank, located in Evangeline Parish, near the community of Oakdale, Louisiana, in Sections 5, 8, 9, & 16, T3S-R2W.

Upon review of the monitoring report in conjunction with the G.D.E. Mitigation Banking Instrument (MBI) (Section VI.) which was signed on April 23, 2007, it is clear that the performance standards as set forth by this banking agreement have not been met.

At this time we are suspending further credit sales for the G.D.E., Investments Mitigation Bank. We are requesting that you provide an adaptive management plan that addresses the following issues:

1. The ratio of hard mast to soft mast (reference page 3 of the MBI)
2. Invasive/exotic vegetation control (page 4 of the MBI)
3. The roadways that exist on the mitigation bank site.
4. The ponds and food plots that exist on the mitigation bank site.
5. The Interim Success Criteria (page 6 of the MBI) in which it is stated that "site hydrology shall be restored such that the site meets the wetland criterion as described in the Corps 1987 Wetlands Delineation Manual. Data demonstrating that wetland hydrology has been re-established is to be collected and provided by the Sponsor and approved by the Corps of Engineers, New Orleans District (CEMVN)."
6. Please provide a copy of the statements for each of the financial accounts.

The above are only some of the issues that should be addressed in this plan. It is strongly recommended that you refer to the MBI especially the sections listed below:

Section V. Performance Standards
Section VI. Reporting Protocols and Monitoring Plan
Section VII. Contingencies, Remedial Actions and Responsibilities

If you have any questions or require any further assistance, please contact Ms. Jacqueline Farabee by telephone at 504-862-2595 or by email at Jacqueline.R.Farabee@usace.army.mil.

Sincerely,

Pete J. Serio
Chief, Regulatory Branch
CEMVN

EXHIBIT 3

Subject: GDE Mitigation Bank Compliance with MBI
Date: May 10, 2013

#	Page # of source	Source of Info	Language from Source	CEMVN Comment	Remediation Plan	Response
1	3	MBI III. Goals & Objectives B. Site Restoration	**<u>Hard Mast (60% of total</u>**) <u>*Dominants (70% of hard mast)*</u> (60% of 70% would equate to approximately 42% of the total plantings) Willow Oak Nuttall Oak <u>*Co-dominants (30% of hard mast)*</u> (30% of 70% would equate to approximately 21% of the total plantings) Overcup Oak Sweet Pecan Bitter Pecan **<u>Soft Mast (40% of total)</u>** <u>*Dominants (60% of soft mast)*</u> (60% of 40% equates to approximately 24% of the total plantings) Sweetgum American Elm Common Persimmon	According to the monitoring report that was received on August 21, 2012 the Bank has not achieved the soft mast to hard mast ratio as stated in the MBI and does not have the specified percentages of hard mast to soft mast dominants and co-dominants that would be acceptable for the Bank.	Provide CEMVN with details as to how this will be remediated (an Adaptive Mgmt. Report). If any actions have been taken to correct this issue please provide that information with the Adaptive Mgmt report.	Off the 12 monitoring plots a total of 62 hard mast and 35 soft were reported. This equates to 64% hard mast and 36% soft mast. Monitoring plots of 1/50th acre and tree planting spacing of 9' will not allow perfect 60% hard mast and 40% soft mast trees to be in each monitoring plot. As reported in letter dated November 27, 2012, Attachment 1 and 1A confirmed 60% hard mast and 40% soft mast trees were planted in 2007 and 2009. After reviewing all 12 monitor plots it confirms the required tree hard to soft mast ratio was planted as per the MBI.

			Co-dominants (40% of a balanced assemblage of + 5 of the species below) (40% of 40% equates to approximately 16%) Sugarberry Mayhaw Red Mulberry Bald Cypress Honey Locust American Sycamore Green Ash Red Maple The above percentages were proposed for plantings (60:40 ratio of hard to soft mast) with the goal of achieving a target of 50% hard mast.			
2.	4	MBI III.B.2. Invasive /Exotic Vegetation Control	Invasive/exotic vegetation, such as Black willo (*Salix nigra),* privet (*Ligustrum spp*) or Chinese tallow (*Triadica sebifera)* in existing forested areas will be treated and monitored to prevent re-	The percentage of exotics on the site is high and needs to be addressed. An adaptive management plan should be devised and presented to CEMVN.	A detailed adaptive management plan should be developed. Information on what action if any has taken place thus far.	As stated in letter dated November 27, 2012, Item #2, The Chinese Tallow trees will be chemically treated by aerial helicopter spraying once canopy closure occurs. The proposed treatment schedule is as follows: 2007 Plant – Treat Fall 2014 2009 Plant – Treat Fall 2016 or 2017

			colonization. The planted sites will be treated, on an as-needed basis, by the use of mechanical or chemical or some combination thereof in order to control exotic/invasive species colonization or other plant competition (approximately 5% or less of the overstory vegetation on an acre-by-acre basis.			Please Approve the proposed treatment plan/schedule for reducing the invasive/exotic Chinese tallow trees to comply with the MBI?
3		8-21-12 Monitoring Report - Results	The monitoring report results section links information from both the 2007 planting and the 2009 planting in some cases.	The information as presented for these plantings should be presented separately.	Present CEMVN with revised copy. Why were the plantings separate? Was the 2009 planting a re-planting due to problems?	The tree planting was done over 2 planting seasons. One consideration was to avoid a planting failure and have to re-plant all the acres. A second consideration was to reduce the amount of money spent per year or until some mitigation income arrived. All future monitoring reports will be separate for 2007 and 2009 tree planting. The combined 1st monitoring report covered the 5 year requirement for the 2012 plant and the 3 year requirement for the 2009 plant.
4		8-21-12 Monitoring Report-Observations	This states that there are 9.78 acres of food plots within the Bank. It also	Food plots do not constitute an acceptable portion of the work plan. These	Present CEMVN with an adaptive management plan for these areas.	The Southern most food plot was planted in the 2013 planting season. Had I received this response earlier the

			states there are 9.95 acres of food plots on adjoining planted areas.	areas should be removed and planted with the species as stated in the MBI III. B. Site Restoration Plan.		balance of food plots would have been planted in the 2013 planting season. The remaining food plots will be planted in the 2014 planting season as per the MBI.
5.		8-21-12 Monitoring Report-Intro	At the time of planting, fire lines were installed along the edges of the planted areas for protection in the event of wildfire.	These areas should be removed and planted with appropriate species as stated in the MBI.	Present CEMVN with an adaptive management plan for these areas.	These lanes were planted in the 2013 planting season.
6		8-21-12 Monitoring Report - Intro	Portions of the mitigation bank falls inside a high fenced area in which the owner has food plots, feeders, and ponds for wildlife.	These ponds should be removed and planted with appropriate species as stated in the MBI.	Present CEMVN with an adaptive management plan for these areas.	This southern pond is not located in the mitigation bank acreage. The location it exist was never farmed. The northern pond will be filled and planted when the food plot is planted in 2014.
7	6	MBI V. B.2. Interim Success Criteria; Vegetation and Vegetative Plantings	For a given planting, a minimum of 300 seedlings per acre must survive through the end of the fourth year (i.e. yr. 5) **following successful attainment of the one-year survivorship criteria.**	The interim success criteria dependent on the initial success criteria. CEMVN may need additional survey plots to gain additional information that better represents conditions on the entire site.	Present CEMVN with additional plots situated in the interior of the site.	We propose moving 5 of the 12 monitoring plots to interior locations to gain better overall monitoring information of the bank. Once the additional requested acres JD has been confirmed we can choose additional monitoring sites. Please approve the moving of the 5 monitoring sites?
8	4	MBI-III B. 3	The MBI states that internal drainage swales will be re-contoured, plugs installed, and culverts removed	Were plugs installed on the bank? Were culverts removed? Do any culverts exist?	Provide CEMVN with information and maps showing the locations of any of these structures that	GDE preparation of the former rice farm land was performed the same as the Lonesome Dove Mitigation Bank. The rice levees were leveled with a dozer down to the

			as necessary. Other culverts will be maintained open and functioning as necessary.		were removed or existing.	existing field grade. No plugs were installed and no culverts existed to be removed.
9		8-21-13 Monitoring Report	Plot Statistics	Please provide the method of calculation used with all variables defined	Please provide this information to CEMVN See Sample 1. below	I suggest we discuss this further with the forester. He states all of this exist in the monitoring report. If 5 sites are moved the monitoring report will require updating. At that time we can split the 2007 and 2009 plantings into 2 monitoring reports.
10	7	MBI	Reporting Protocols			
11		Corps issued Wetland Delineation	For the existing bank For the proposed addition	Present the information as separate requests. For the proposed addition once we compare the new JD with the older JD to compare the wet vs. non-wet areas you will then be asked to provide an As-built report (monitoring report) for the proposed addition.	Please provide information as stated. Once CEMVN receives and reviews this information we will notify you of the steps that need to be taken from that point.	Once the new JD is determined we will comply with this request.
12			Who will be the POC for the information and reports to be provided?	If you are not going to be the POC then please assign someone by sending a statement stating they are your representative and provide their contact information.		Greg Elliott, land owner, will continue to be the POC for the MBI Compliance. Kip Manuel will continue to manage mitigation acreage sales.
13	7	MBI-VI.	A. Visual	Please review	Use this as a	We can discuss further

		Reporting Protocols and Monitoring Plan	Description B. Initial and Interim Success Criteria C. Continuous Monitoring Reports D. Schedule	this information again.	guideline for reports.	after all these other concerns are agreed upon.

SAMPLE 1: Plot statistics for Plot number 1

Plot Statistics

Trees per Plot	16
Total trees per acre	800
Planted trees per acre	200
Percent of Total Trees	25%
Survival Rate of Planted trees	37%
Volunteer trees per acre	600
Percent of total trees	75%
Exotics per plot	1
Exotics per acre	50
Percent Exotic	6%
# of Species per Plot	4

Example: Survival rate of trees planted = 37%. Please give a sample calculation with all variables labeled.

EXHIBIT 4

Subject: GDE Mitigation Bank Compliance
Date: July 22, 2013

1. In your May 22, 2013, response to comments provided by CEMVN on May 10 2013, you stated that: "of the 12 monitoring plots a total of 62 for hard mast and 35 for soft mast was reported". However in referencing the data provided for the 12 monitoring plots it is clearly shown that bank has not achieved the hard mast to soft mast ratio as stated in the MBI. The calculations for hard mast to soft mast are: 31% hard mast to 69% soft mast overall. These calculations take into account all specimens in each plot.

Please refer to the MBI under Goals and Objectives for further information.

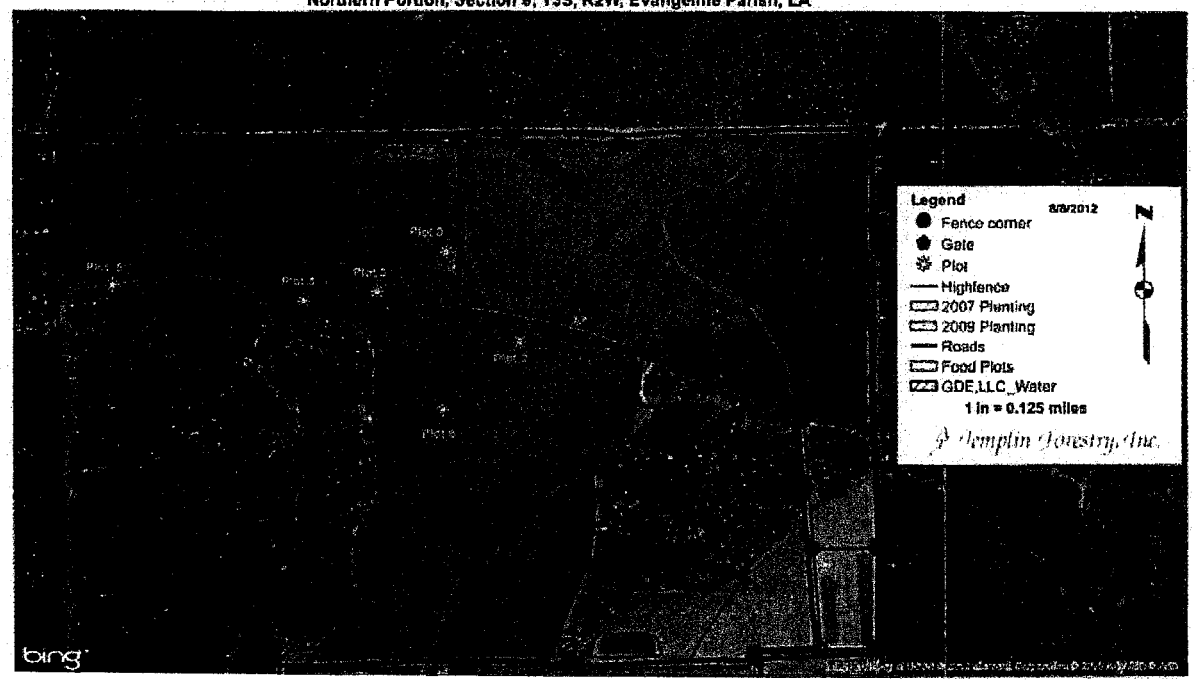
A method for adjusting such percentages should be included in the adaptive management plan that you present to CEMVN.

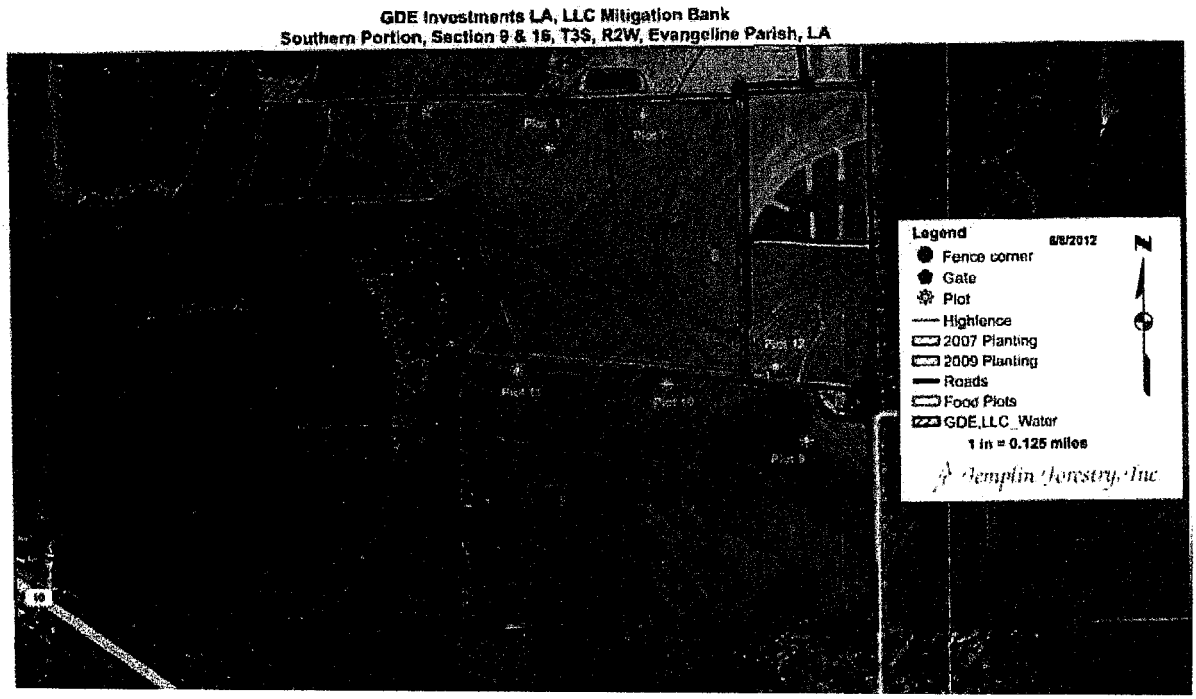
2. The percentage of exotics on site is high and will need to be addressed. The Chinese Tallow should be treated this year. A detailed adaptive management plan should be developed and presented to CEMVN.

Please refer to MBI Section III.B.2. Invasive/Exotic Vegetation Control for further information.

3. Please refer below to the copies of the maps that were provided with your August 21, 2012, monitoring report and compare them to the July 8, 2013, JD (copy attached). After your comparison please provide a separate map showing where the 278.3 acres from the 2007 and 2009 plantings are located on the JD.

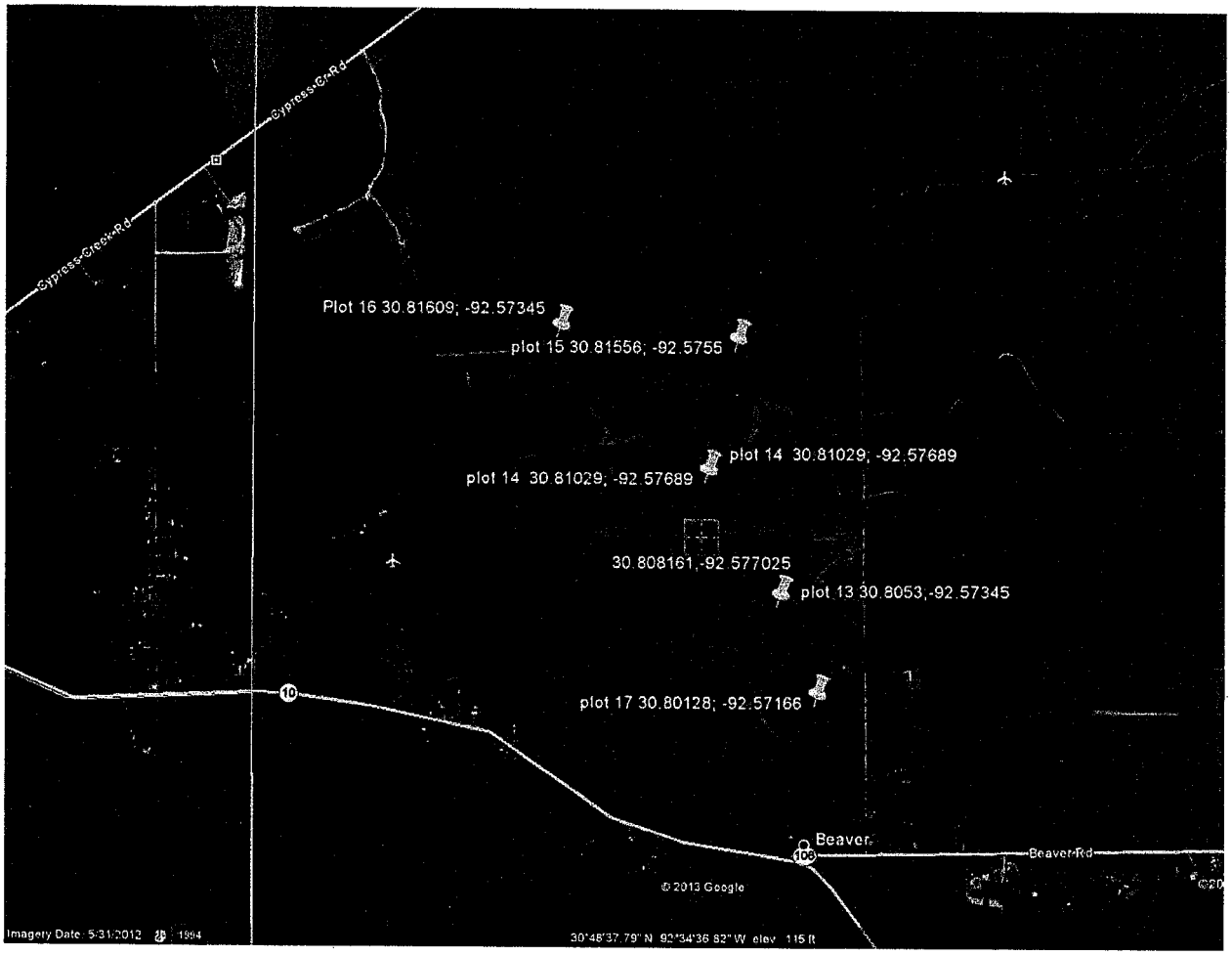
GDE Investments LA, LLC Mitigation Bank
Northern Portion, Section 9, T3S, R2W, Evangeline Parish, LA





4. It was stated in your May 22, 2013 response to the May 10, 2013, comments that the fire lanes and some of the food plots were planted. Please provide data on the plantings (species list, seedling numbers per species, and describe your methodology in planting for maintaining a diverse habitat). Provide a map that includes these 2013 plantings.

5. Please add additional bank monitoring plots as indicated on the map below. These plots are numbered 13 through 17 and have Latitude and Longitude assigned to each plot. Please provide the additional information for these plots in the monitoring report format. These 5 plots will be additional permanent plots set up as stated on page 7 (Section VI. C. of the MBI) and included in all monitoring reports herein.



6. In comments provided in your May 22, 2013, response you stated that the monitoring report submitted on August 21, 2012, should cover the 5 year requirement for the 2007 plantings and the 3 year requirement for the 2009 plantings.

The following is stated in Section V. of the MBI on pages 5 and 6:

<u>Initial Success Criteria</u>: 2. Vegetation: A minimum of 50 % or 266 planted seedlings per acre, consistent with the planted ration of hard mast to soft mast-producing species, must survive through the end of the first growing season following the planting (i.e. Year 1). This criterion will apply to initial plantings as well as any subsequent

<u>Interim Success Criteria</u>: 2. Vegetation and Vegetative Plantings. For a given planting, a minimum of 300 seedlings per acre must survive through the end of the fourth year (i.e. Year 5) following successful attainment of the one-year survivorship criteria. Trees established through natural recruitment may be included in this tally; however, a range of 120 to 135 hard mast-producing seedlings per acre must be present. Exotic/invasive species may not be included in this tally.

By Year 5 following successful attainment of the one-year survivorship criteria, the bank acreage and the perimeter of that acreage shall be virtually free (approximately 5% or less on an acre-by-acre basis) of exotic/invasive vegetation.

Planted tracts must exhibit characteristics and diversity indicative of a viable native forested wetland community commensurate with stand age and site conditions by Year 5. Achievement of a wetland vegetation dominance is defined as a vegetation community where more than 50% of all dominant species are facultative ("FAC") or wetter, excluding FAC-plants, using "routine delineation methods" as described in the "Corps of Engineers Wetland Delineation Method," Technical Report 97-1 ("1987 Manual").

7. In review of the GDE Mitigation Bank file it was discovered that The Calcasieu/Mermentau Wetland Charitable Trust does not fit the description of a servitude holder. Section X. F. 2. of the MBI states: "The Sponsor shall execute a conservation servitude (pursuant to the Louisiana Conservation Servitude Act, R.S. 9:1271 et seq.) substantially in the form attached hereto as Attachment F and record it in the Mortgage and Conveyances Records Office of Evangeline Parish. The Conservation Servitude Holder shall be approved by the IRT prior to its execution. The Holder shall be qualified to hold this Conservation Servitude by virtue of being:

a. A governmental body empowered to hold an interest in immovable property under the laws of the State of Louisiana or the United States of America; or

b. 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 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. "

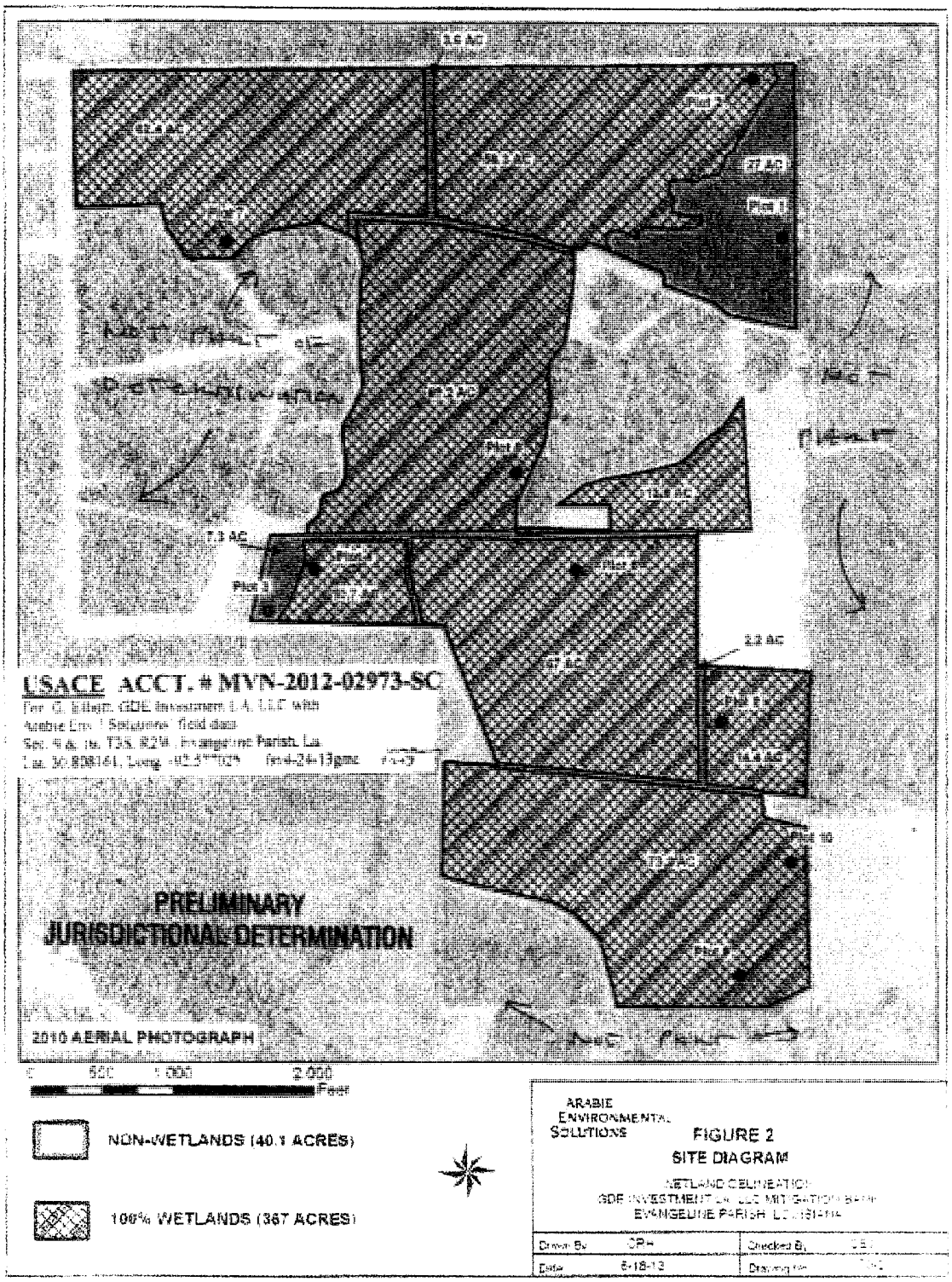
8. The Conservation Servitude and the MBI have conflicting language in relation to the "Uses Prohibited by the Conservation Servitude" (Section XI. A of the MBI) and paragraph four of the servitude. I do not have information that would support such changes in language, however if you can provide any supporting information that would be helpful.

9. Please note when calculating acreage for the bank please only round to the nearest 1/10 of an acre. For example the acreage for the fire lines (as listed in the August 21, 2013, monitoring report) would be 5.8 not 5.77.

Subject: GDE Mitigation Bank Compliance
Date: July 22, 2013

Attachment:

Preliminary Jurisdictional Determination



Summary:

Please provide an detailed adaptive management plan to address the items listed above. Please provide support for all information provided.