

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

LORETTO O'REILLY, Jr., AND
KELLY FITZMAURICE,

Plaintiffs,

v.

UNITED STATES ARMY CORPS
OF ENGINEERS,

Defendant.

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Case No.: 06-10788

Sect. C

Mag. 3

CONSENT DECREE

Plaintiffs Kelly Fitzmaurice and Loretto O'Reilly, Jr. ("Plaintiffs") and Terra Bella Group, L.L.C. ("Terra Bella"), the parties consenting to this Decree (hereinafter "the Parties"), hereby agree to and request entry of this Consent Decree (hereinafter "Decree") to resolve the instant litigation.

RECITALS

WHEREAS, this action relates to the issuance of a permit under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, to fill in sixty-five (65) acres of wetlands ("the Permit") in order to build the Terra Bella Traditional Neighborhood Development, a single-family residential

development in St. Tammany Parish located on approximately 376 acres in Sections 31, 37, 45, and 46, Townships 6 and 7, Ranges 10 and 11 East, off Louisiana Highway 1085 in St. Tammany Parish, Louisiana (“the Project”). Terra Bella intends to build the Project in two phases. Phase I includes the portion of the Project located south of the Soap and Tallow Branch, which divides the Project site. Phase II of the Project is development occurring on the portion of the Project located north of the Soap and Tallow Branch;

WHEREAS, on December 5, 2006, Plaintiffs filed their Complaint in this matter alleging that Defendant United States Army Corps of Engineers (“the Corps”) violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §4321, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 551, by failing to fulfill NEPA’s requirements regarding cumulative impacts and mitigation analyses when issuing the Permit. Plaintiffs further alleged, *inter alia*, that the Corps issued the Permit without adequate attention to the cumulative impacts of the proposed development, without adequately considering alternatives and without preparing an adequate Environmental Assessment, in accordance with NEPA and APA.

WHEREAS, on December 21, 2006, Terra Bella intervened in this matter and subsequently filed an Intervenor Complaint on December 28, 2006. Terra Bella denies and disputes the allegations and claims set forth in Plaintiffs’ Complaint, and has moved to dismiss the Complaint in its entirety;

WHEREAS, the Parties wish to implement this Decree to avoid protracted and costly litigation and to preserve judicial resources;

WHEREAS, the Parties recognize, and the Court entering this Decree finds, that this Decree has been negotiated in good faith and that the Decree is fair, reasonable, and in the public interest.

DECREE

NOW, THEREFORE, it is hereby Decreed and Ordered as follows:

1. This Court has jurisdiction over the Parties and the subject matter of this Decree as to these specific claims and parties.
2. This Decree shall apply to and be binding upon each of the Parties, their officers, agents, employees, contractors, successors in interest, and assigns.
3. Terra Bella shall maintain a Conservation Servitude held by St. Tammany Parish, on a portion of the Project site to include 172.35 acres of land of which approximately 108 acres consists of wetlands and as described in further detail in the servitude, in accordance with the Louisiana Conservation Servitude Act (R.S. 9:1271 et seq.). The Conservation Servitude shall run with the land and shall be binding upon Terra Bella, its successors or assigns, and shall remain in full force and effect forever. The purpose of the Conservation Servitude shall be to retain land and water areas in their natural, vegetative, hydrologic, scenic, open, agricultural or wooded condition and to retain such areas as suitable habitat for fish, plants or wildlife. This Consent Decree shall not in any way further restrict or modify the Conservation Servitude previously filed/recorded or the Reserved Rights, or any other rights to Grantor (Fairway Development Group, L.L.C. and/or Terra Bella), included in the subject Conservation Servitude previously filed/recorded, including the right to engage in uses of the Conservancy Parcel that are not prohibited in the Conservation Servitude, and which are not inconsistent with the intent and purposes of the Conservation Servitude, including, but not limited to, construction and maintenance of dry or wet retention

ponds; construction and maintenance of walking paths and directional signage; construction and maintenance of foot and non-combustion engine motor vehicle bridges over the Soap and Tallow Creek following any required review and approval by the Corps; and construction and maintenance of observation decks, gazebos and playground or park equipment, following any required review and approval by the Corps, provided that all such uses must be consistent with the intent and purposes of the Conservation Servitude. Terra Bella shall ensure that the Conservation Servitude is filed in the real property records of St. Tammany Parish.

4. All design features or other modifications (including but not limited to retention ponds, culverts, etc.) included in the hydrologic report, submitted to Plaintiffs and prepared and certified by Cooper Engineering, Inc., verifying that the Project will reduce peak flows (i.e., the runoff rate) by twenty-five percent (25%) for a 100-year design storm for Phase I of the Project, as defined above, are mandatory and enforceable conditions of this Decree. Terra Bella shall include such design features in the actual construction of the Project.
5. Terra Bella has provided Plaintiffs a supplemental hydrologic report, prepared by Cooper Engineering, Inc., which Terra Bella represents verifies and confirms that the Project will reduce peak flows (i.e., the runoff rate) by twenty-five percent (25%) for a 25- and 50-year design storm for Phase I. All design features or other modifications (including but not limited to retention ponds, culverts, etc.) included in the supplemental hydrologic report verifying those twenty-five percent (25%) reductions are mandatory, enforceable conditions of this Decree,

and Terra Bella shall include such design features in the actual construction of the Project. Terra Bella shall not commence construction on the subject sixty-five (65) acres until completion of these recommended design features/modifications.

6. Terra Bella shall not commence construction of Phase II of the Project, as defined above, unless or until Cooper Engineering, Inc. or another engineer agreed upon by Plaintiffs and Terra Bella prepares and certifies a hydrologic report verifying and confirming that the entire Project, both Phase I and Phase II, shall achieve a twenty-five percent (25%) reduction of peak flows for a 25-, 50-, and 100-year design storm. All design features or other modifications (including but not limited to retention ponds, culverts, etc.) included in the hydrologic report verifying these twenty-five percent (25%) reductions shall become mandatory, enforceable conditions of this Decree and Terra Bella shall include such design features in the actual construction of the Project.
7. Terra Bella shall ensure that the Phase II hydrologic report will take into account swelling of soils, siltation, and nutrient levels in holding water (which may cause the system to become eutrophic or anoxic) in order to ensure that the retention pond(s) will reduce the run-off rate by 25% until such time as Terra Bella either sells the last lot located within Phase II of the Project or turns over these responsibilities for maintenance and/or reduction of run-off rate(s) to St. Tammany Parish, the relevant homeowners' association, or similar group or entity.
8. In conjunction with preparing the Phase II hydrologic report, Terra Bella shall ensure that Cooper Engineering re-examines the retention pond(s) for Phase I to

ensure that the pond maintains its water storage capacity consistent with that used in Phase I hydrologic report. To the extent that the pond's retention capacity is reduced by swelling of soils, siltation, or other causes, Terra Bella shall take measures necessary to restore the Phase I retention pond's capacity to that used in the calculations for the Phase I hydrologic report and steps necessary to ensure that the retention pond(s) will reduce the run-off rate by 25% until such time as Terra Bella either sells the last lot located within Phase II of the Project or turns over these responsibilities for maintenance and/or reduction of run-off rate(s) to St. Tammany Parish; the relevant homeowners' association, or similar group or entity. Terra Bella shall also ensure that Cooper Engineering examines whether nutrient loading in the retention pond for Phase I has caused or will cause the system to become eutrophic or anoxic, and if so, Terra Bella shall take such measures necessary to correct the condition in a lawful and responsible manner. Terra Bella shall provide the Plaintiffs with documentation of Cooper Engineering's analysis and Terra Bella's actions, if any, taken in response.

9. Terra Bella shall ensure that no occupancy (whether residential, commercial, or otherwise) of the Project site, shall begin until an offsite sewer treatment facility is operating to service the central sewerage and water needs of the Project.
10. As an additional measure for onsite mitigation, Terra Bella shall place a Conservation Servitude on an additional area of the Project site (consisting of approximately 21 lots and a portion of proposed roadway) indicated on the attached map (Exhibit A) and legal description (Exhibit B) and as described in further detail in the conservation servitude in accordance with the Louisiana

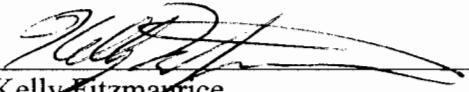
Conservation Servitude Act (R.S. 9:1271 et seq.). The Conservation Servitude shall be filed in the real property records of St. Tammany Parish and held by the Land Trust for Southeast Louisiana, or such other entity acceptable to Terra Bella and Plaintiffs, provided that entity is a qualified non-profit entity, in order to preserve the tax benefits to Terra Bella. The Conservation Servitude will be classified as a gratuitous donation for tax purposes. The Conservation Servitude described in this Paragraph shall not be or become effective unless or until the Court enters this Decree. The Conservation Servitude referenced in this paragraph shall reserve to Terra Bella the same or similar rights as the rights identified in Paragraph 3, above and in the Conservation Servitude In Favor of Parish of St. Tammany, also identified in Paragraph 3.

11. Regardless of events subsequent to the entry of this Decree, including without limitation any decision by Terra Bella not to develop this or any other project in whole or in part, all Conservation Servitudes provided for in this Decree: 1) shall be consistent with the purpose of retaining the land and water areas they cover in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition; 2) shall retain such areas as suitable habitat for fish, plants, or wildlife; 3) shall be filed in the real property records of St. Tammany Parish; 4) shall run with the land; 5) shall be binding upon Terra Bella, its successors or assigns, and all future possessors or owners of the Project site; and 6) shall remain in full force and effect forever.
12. Plaintiffs release any and all claims that they may have against Terra Bella or the Corps involving or relating to Permit No. MVN 2005-1547 EFF.

13. This Decree shall be effective upon the date of its entry by the Court.
14. The Court shall maintain jurisdiction over this action for the purpose of enabling the parties to apply to the Court to construe, carry out, or enforce compliance with the terms and conditions set forth in this Decree.
15. Each Party shall bear its own costs and attorney's fees.
16. The undersigned representatives of the respective Parties certify that they are fully authorized by the Party that they represent to enter into the terms and conditions of this Decree and to legally bind that Party. This Decree may be signed in counterparts.
17. Upon entry of this Decree, this Court's April 4, 2007 Order directing Terra Bella to refrain from working within the 65 acres covered by the Permit until May 12, 2007 is vacated and this case shall be dismissed with prejudice, except that this Court retains all jurisdiction necessary to construe, carry out, and enforce compliance with this Decree.

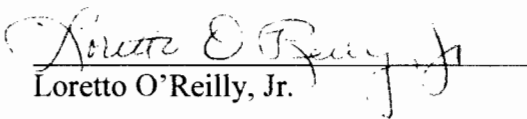
The undersigned party agrees to the Consent Decree in
O'Reilly et. al v. United States Army Corps of Engineers, 06-10788 (E.D. La.)

Plaintiffs



Kelly Fitzmaurice

Date:

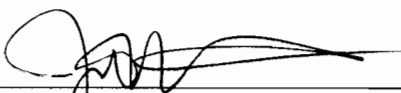


Loretto O'Reilly, Jr.

Date:

Approved as to form:

For Plaintiffs



Jill M. Witkowski, La. Bar No. 30121
Adam Babich, La. Bar. No. 27177 *AB 5/3/07*
Elizabeth Nagelin, Student Attorney
Elizabeth Roché, Student Attorney
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Telephone (504) 862-8814
Fax (504) 862-8721

The undersigned party agrees to the Consent Decree in O'Reilly et. al v. United States Army Corps of Engineers, 06-10788 (E.D. La.)

TERRA BELLA GROUP, L.L.C.



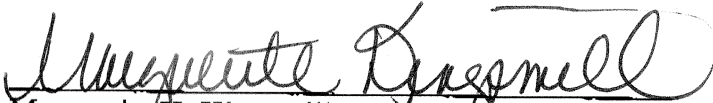
Name: RANSOM C. MEYER

Title: MEMBER

Date: 5-1-07

Approved as to form:

**For Intervenor
Terra Bella Group, L.L.C.**



Marguerite K. Kingsmill, Esq. (La. Bar No. 7347)

Michael R. C. Riess (La. Bar No. 2073)

Thomas P. Henican (La. Bar. No. 19292)

John V. Nguyen (La. Bar No. 30651)

Kingsmill Riess, L.L.C.

201 St. Charles Ave., Suite 3300

New Orleans, Louisiana 70170

Telephone (504) 581-3300

Fax (504) 581-3310

Entered as an Order of this Court this _____ day of _____, 2007.

BY THE COURT:

CHIEF JUDGE HELEN G. BERRIGAN

Exhibit A

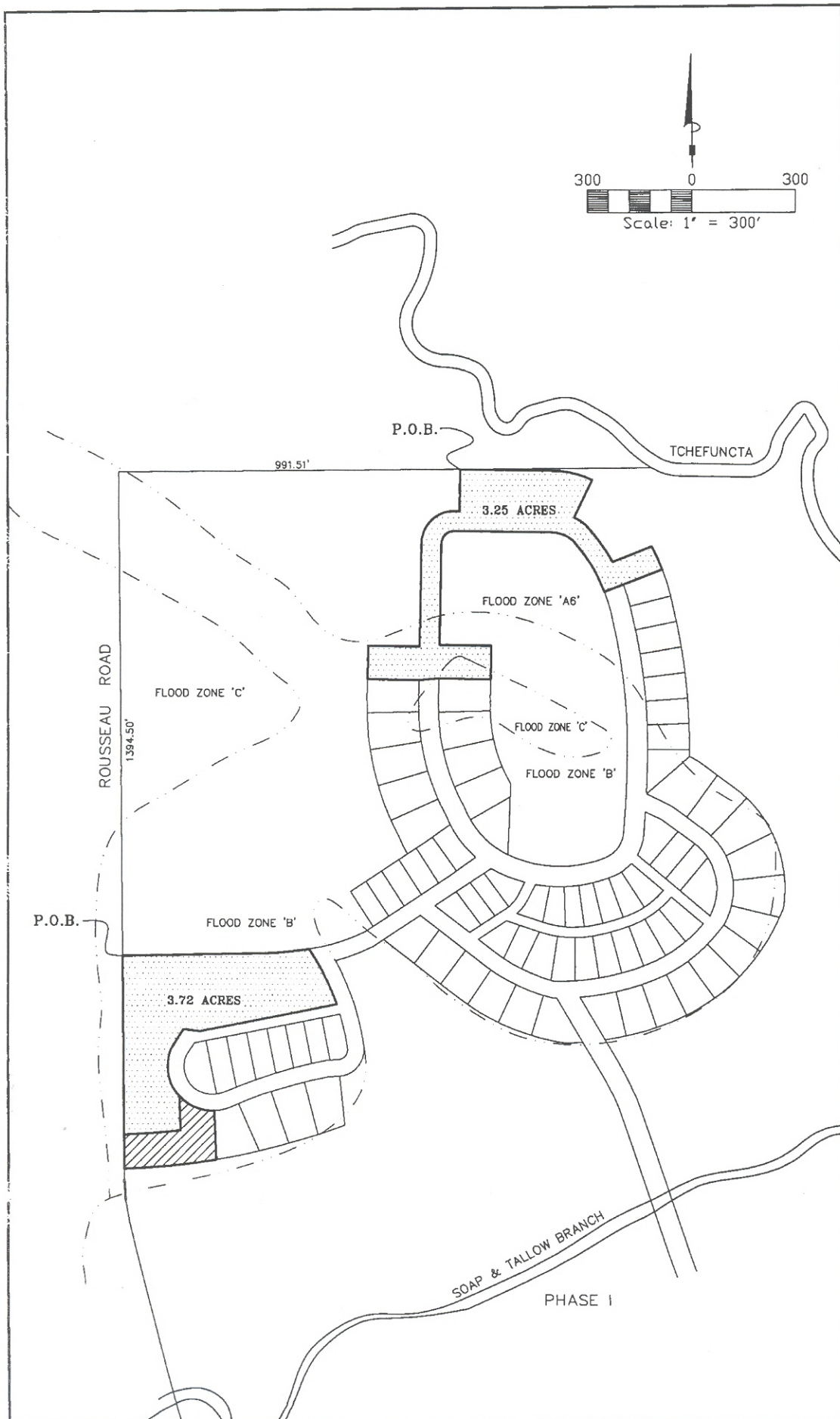


EXHIBIT B

I. A PORTION OF GROUND LOCATED IN SECTION 37, TOWNSHIP 6 SOUTH, RANGE 10 EAST, ST. TAMMANY PARISH, LOUISIANA.

ALL THAT CERTAIN PARCEL OF GROUND SITUATED IN SECTION 37, TOWNSHIP 6 SOUTH, RANGE 10 EAST, ST. TAMMANY PARISH, LOUISIANA, AND BEING MORE FULLY DESCRIBED AS FOLLOWS;

COMMENCE FROM THE NORTHWEST CORNER OF SECTION 37, TOWNSHIP 6 SOUTH, RANGE 10 EAST, THENCE GO NORTH 89 DEGREES 39 MINUTES 45 SECONDS EAST, A DISTANCE OF 66.75 FEET TO THE EAST RIGHT-OF-WAY OF ROUSSEAU ROAD; THENCE RUN NORTH 89 DEGREES 39 MINUTES 45 SECONDS EAST FOR A DISTANCE OF 991.51 FEET TO THE POINT OF BEGINNING;

FROM THE POINT OF BEGINNING RUN SOUTH 89 DEGREES 07 MINUTES 19 SECONDS EAST FOR A DISTANCE OF 265.51 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 278.00 FEET AND AN ARC LENGTH OF 120.50 FEET TO A POINT; THENCE RUN SOUTH 25 DEGREES 39 MINUTES 54 SECONDS WEST FOR A DISTANCE OF 120.00 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 158.00 FEET AND AN ARC LENGTH OF 38.40 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 528.87 FEET AND AN ARC LENGTH OF 13271 FEET TO A POINT; THENCE RUN NORTH 68 DEGREES 18 MINUTES 33 SECONDS EAST FOR A DISTANCE OF 120.78 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 648.87 FEET AND AN ARC LENGTH OF 72.60 FEET TO A POINT; THENCE RUN SOUTH 68 DEGREES 49 MINUTES 55 SECONDS WEST FOR A DISTANCE OF 177.87 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 472.99 AND AN ARC LENGTH OF 174.80 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 100.00 AND AN ARC LENGTH OF 67.65 FEET TO A POINT; THENCE RUN NORTH 89 DEGREES 10 MINUTES 11 SECONDS WEST FOR A DISTANCE OF 279.27 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 38.00 FEET AND AN ARC LENGTH OF 59.46 FEET TO A POINT; THENCE RUN SOUTH 01 DEGREES 05 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 289.52 FEET TO A POINT; THENCE RUN SOUTH 88 DEGREES 54 MINUTES 09 SECONDS EAST FOR A DISTANCE OF 15000 FEET TO A POINT; THENCE RUN SOUTH 01 DEGREES 05 MINUTES 51 SECONDS WEST FOR A DISTANCE OF 96.00 FEET TO A POINT; THENCE RUN NORTH 88 DEGREES 54 MINUTES 09 SECONDS WEST FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE RUN SOUTH 84 DEGREES 46 MINUTES 57 SECONDS WEST FOR A DISTANCE OF 5835 FEET TO A POINT; THENCE RUN NORTH 88 DEGREES 54 MINUTES 10 SECONDS WEST FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE RUN NORTH 01 DEGREES 05 MINUTES 50 SECONDS EAST FOR A DISTANCE OF 96.00 FEET TO A POINT; THENCE RUN SOUTH 88 DEGREES 54 MINUTES 10 SECONDS EAST FOR A DISTANCE OF 150.00 FEET TO A POINT; THENCE RUN NORTH 01 DEGREES 05 MINUTES 50 SECONDS EAST FOR A DISTANCE OF 296.06 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 96.00 FEET AND AN ARC LENGTH OF 150.17 FEET TO A POINT; THENCE RUN SOUTH 89 DEGREES 00 MINUTES 11 SECONDS

EAST FOR A DISTANCE OF 13.76 FEET TO A POINT; THENCE RUN NORTH 00 DEGREES 49 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 120.22 FEET BACK TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 3.25 ACRES OF LAND MORE OR LESS

2. A PORTION OF GROUND LOCATED IN SECTION 37, TOWNSHIP 6 SOUTH, RANGE 10 EAST, ST. TAMMANY PARISH, LOUISIANA.

ALL THAT CERTAIN PARCEL OF ~~onouxo~~ SITUATED IN SECTION 37, TOWNSHIP 6 SOUTH - RANGE 10 EAST, ST. TAMMANY PARISH, LOUISIANA, AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCE FROM THE NORTHWEST CORNER OF SECTION 37, TOWNSHIP 6 SOUTH, RANGE 10 EAST, THENCE GO NORTH 89 DEGREES 39 MINUTES 45 SECONDS EAST, A DISTANCE OF 665.75 FEET TO THE EAST RIGHT-OF-WAY OF ROUSSEAU ROAD; THENCE RUN SOUTH 00 DEGREES 26 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 1394.50 FEET TO THE POINT OF BEGINNING;

FROM THE POINT OF BEGINNING RUN NORTH 88 DEGREES 55 MINUTES 54 SECONDS WEST FOR A DISTANCE OF 404.28 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 693.85 FEET AND AN ARC LENGTH OF 107.35 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 557.70 FEET AND AN ARC LENGTH OF 29.81 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 679.42 FEET AND AN ARC LENGTH OF 177.23 FEET TO A POINT; THENCE RUN SOUTH 78 DEGREES 46 MINUTES 48 SECONDS WEST FOR A DISTANCE OF 403.40 FEET TO A POINT; THENCE RUN NORTH 83 DEGREES 33 MINUTES 29 SECONDS WEST FOR A DISTANCE OF 48.84 FEET TO A POINT; THENCE RUN SOUTH 33 DEGREES 05 MINUTES 34 SECONDS WEST FOR A DISTANCE OF 52.80 FEET TO A POINT ON A CURVE TO THE LEFT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 92.42 FEET AND AN ARC LENGTH OF 48.90 FEET TO A POINT ON A CURVE TO THE LEFT (COUNTERCLOCKWISE & TANGENT); THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 30.54 FEET AND AN ARCL LENGTH OF 113.63 FEET TO A POINT; THENCE RUN SOUTH 02 DEGREES 08 MINUTES 38 SECONDS EAST FOR A DISTANCE OF 100.90 FEET TO A POINT ON A CURVE TO THE RIGHT; THENCE RUN ALONG SAID CURVE WITH A RADIUS OF 2003.37 FEET AND AN ARC LENGTH OF 164.76 FEET TO A POINT ON THE EAST RIGHT-OF-WAY OF ROUSSEAU ROAD; THENCE RUN ALONG SAID RIGHT-OF-WAY NORTH 00 DEGREES 26 MINUTES 25 SECONDS WEST FOR A DISTANCE OF 519.88 FEET BACK TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 3.72 ACRES OF LAND MORE OR LESS

**UNITED STATES DISTRICT COURT
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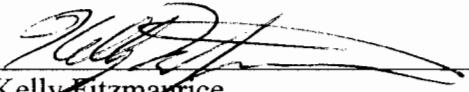
Conservation Servitude Act (R.S. 9:1271 et seq.). The Conservation Servitude shall be filed in the real property records of St. Tammany Parish and held by the Land Trust for Southeast Louisiana, or such other entity acceptable to Terra Bella and Plaintiffs, provided that entity is a qualified non-profit entity, in order to preserve the tax benefits to Terra Bella. The Conservation Servitude will be classified as a gratuitous donation for tax purposes. The Conservation Servitude described in this Paragraph shall not be or become effective unless or until the Court enters this Decree. The Conservation Servitude referenced in this paragraph shall reserve to Terra Bella the same or similar rights as the rights identified in Paragraph 3, above and in the Conservation Servitude In Favor of Parish of St. Tammany, also identified in Paragraph 3.

11. Regardless of events subsequent to the entry of this Decree, including without limitation any decision by Terra Bella not to develop this or any other project in whole or in part, all Conservation Servitudes provided for in this Decree: 1) shall be consistent with the purpose of retaining the land and water areas they cover in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition; 2) shall retain such areas as suitable habitat for fish, plants, or wildlife; 3) shall be filed in the real property records of St. Tammany Parish; 4) shall run with the land; 5) shall be binding upon Terra Bella, its successors or assigns, and all future possessors or owners of the Project site; and 6) shall remain in full force and effect forever.
12. Plaintiffs release any and all claims that they may have against Terra Bella or the Corps involving or relating to Permit No. MVN 2005-1547 EFF.

13. This Decree shall be effective upon the date of its entry by the Court.
14. The Court shall maintain jurisdiction over this action for the purpose of enabling the parties to apply to the Court to construe, carry out, or enforce compliance with the terms and conditions set forth in this Decree.
15. Each Party shall bear its own costs and attorney's fees.
16. The undersigned representatives of the respective Parties certify that they are fully authorized by the Party that they represent to enter into the terms and conditions of this Decree and to legally bind that Party. This Decree may be signed in counterparts.
17. Upon entry of this Decree, this Court's April 4, 2007 Order directing Terra Bella to refrain from working within the 65 acres covered by the Permit until May 12, 2007 is vacated and this case shall be dismissed with prejudice, except that this Court retains all jurisdiction necessary to construe, carry out, and enforce compliance with this Decree.

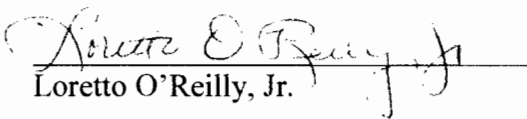
The undersigned party agrees to the Consent Decree in
O'Reilly et. al v. United States Army Corps of Engineers, 06-10788 (E.D. La.)

Plaintiffs



Kelly Fitzmaurice

Date:

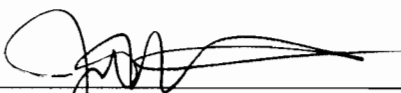


Loretto O'Reilly, Jr.

Date:

Approved as to form:

For Plaintiffs



Jill M. Witkowski, La. Bar No. 30121
Adam Babich, La. Bar. No. 27177 *AB 5/3/07*
Elizabeth Nagelin, Student Attorney
Elizabeth Roché, Student Attorney
Tulane Environmental Law Clinic
6329 Freret Street
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Telephone (504) 862-8814
Fax (504) 862-8721

The undersigned party agrees to the Consent Decree in O'Reilly et. al v. United States Army Corps of Engineers, 06-10788 (E.D. La.)

TERRA BELLA GROUP, L.L.C.



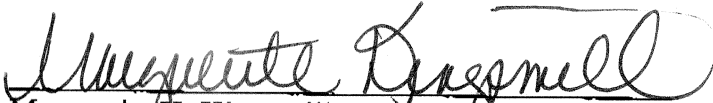
Name: RANSOM C. MEYER

Title: MEMBER

Date: 5-1-07

Approved as to form:

**For Intervenor
Terra Bella Group, L.L.C.**



Marguerite K. Kingsmill, Esq. (La. Bar No. 7347)

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New Orleans, Louisiana 70170

Telephone (504) 581-3300

Fax (504) 581-3310

Entered as an Order of this Court this _____ day of _____, 2007.

BY THE COURT:

CHIEF JUDGE HELEN G. BERRIGAN