

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

GULF RESTORATION
NETWORK

Plaintiff,

v.

HANCOCK COUNTY
DEVELOPMENT, L.L.C.

Defendant.

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Civil Action#: 1:08-cv-00186-LG-RHW

Judge: Louis Guirola, Jr.

Magistrate Judge: Robert H. Walker

**PLAINTIFF GULF RESTORATION NETWORK'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Gulf Restoration Network moves under Federal Rule of Civil Procedure 56 and Local Rule 56.1 for partial summary judgment that:

1. Defendant Hancock County Development, L.L.C. ("HCD") is liable for violating the following Clean Water Act ("CWA") requirements:
 - a. 33 U.S.C. §§ 1311(a), 1342 (discharging pollutants into waters of the United States without a permit) and
 - b. 33 U.S.C. §§ 1311(a), 1344 (engaging in dredge and fill activities in wetlands without a permit), and
2. Plaintiff has standing to bring this suit.

Plaintiff Gulf Restoration Network files concurrently and incorporates by reference Plaintiff Gulf Restoration Network's Memorandum in Support of Its Motion for Partial Summary

Judgment. As Plaintiff's Memorandum demonstrates, there is no genuine issue about any material fact relevant to the requested judgment and the Plaintiff is entitled to judgment as a matter of law.

Plaintiff requests oral argument on its motion and respectfully requests that the Court grant this motion and enter judgment that:

1. Defendant HCD is liable for violating the following CWA requirements:
 - a. 33 U.S.C. §§ 1311(a), 1342 (discharging pollutants into waters of the United States without a permit) and
 - b. 33 U.S.C. §§ 1311(a), 1344 (engaging in dredge and fill activities in wetlands without a permit), and
2. Plaintiff has standing to bring this suit.

Respectfully submitted this 13th day of July, 2010,

/s Elizabeth Livingston de Calderón

Elizabeth Livingston de Calderón, LA Bar # 31443
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
ph: (504) 865-5789, dir: (504) 862-8819
fax: (504) 862-8721
email: ecaldero@tulane.edu

Robert Wiygul
1025 Division Street, Suite C
Biloxi, MS 39530
ph: (228) 374-0700
fax: (228) 374-0725
email: Robert@waltzerlaw.com

Counsel for Plaintiff, Gulf Restoration Network

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing request has been served upon the following counsel of record by electronic means on July 13, 2010:

Christopher M. Carron
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

Roderick Mark Alexander, Jr.
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

Terese T. Wyly
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

/s Elizabeth Livingston de Calderón
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Civil Action#: 1:08-cv-00186-LG-RHW

Judge: Louis Guirola, Jr.

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**PLAINTIFF GULF RESTORATION NETWORK’S MEMORANDUM IN SUPPORT OF
ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

INTRODUCTION

Hancock County Development, L.L.C. (“HCD”) had plans to build the “Town of Stennis” on 700 acres of property, mostly wetlands, located just south of I-10 and just west of Highway 603 in Hancock County, Mississippi. In mid-2006, HCD began clearing acres of forest, building miles of canals and roads, and dredging and filling a large amount of wetlands located on the property as part of that plan – all without first obtaining the permits the law requires. The law requires a storm water discharge permit for “industrial activities,” such as building roads and canals that disturb more than five acres of land - or a larger common plan of development. 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(b)(14)(x). Similarly, the law states that “[a]ny discharge of dredged or fill materials into ... ‘waters of the United States’ is forbidden unless authorized by a permit issued by the Corps of Engineers pursuant to the Clean Water Act § 404, 33 U.S.C. § 1344.” *United States v. Riverside Bayview Homes, Inc.*, 474 U.S.

121, 123 (1985); 33 U.S.C. § 1311(a). But HCD stripped land and filled wetlands in Hancock County without even applying for a Clean Water Act § 402 storm water discharge permit or a Clean Water Act § 404 wetlands dredge and fill permit. Accordingly, HCD violated – and continues to violate – the federal Clean Water Act.

As this memorandum explains, the federal Clean Water Act requires that companies like HCD go through a permitting process to protect water quality, wildlife, and people before they undertake activities such as replacing a wetlands forest with a town. Because the Clean Water Act is a strict liability statute and there are few defenses to illegal discharges, partial summary judgment on whether the statute has been violated is common and promotes efficiency. In this motion, the Gulf Restoration Network requests that the Court grant partial summary judgment on the question of whether HCD violated the Clean Water Act through its unpermitted dredge and fill activity and its discharge of pollutants. The Gulf Restoration Network also requests partial summary judgment on the question of whether it has standing to bring this action. The undisputed facts set out below show that the GRN has proven each element of HCD’s Clean Water Act violations and of GRN’s standing. If the Court grants this motion, appropriate discovery and a hearing focused on the appropriate penalties and injunctive relief for the violation can then be scheduled.

STANDARD OF PROOF ON SUMMARY JUDGMENT

Summary judgment is appropriate when “there is no genuine issue as to any material fact and . . . the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). “Summary judgment may be rendered on liability alone.” Fed. R. Civ. P. 56(d)(2). To successfully oppose a motion, the opposing party “may not rest upon mere allegations or denials” but rather “must set forth specific facts showing that there

is a genuine issue for trial.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, n.11 (1986) (quoting Fed. R. Civ. P. 56(e)); *see also Taita Chem. Co. v. Westlake Styrene Corp.*, 246 F.3d 377, 385 (5th Cir. 2001). Otherwise, summary judgment should be entered for the moving party. *See O’Hare v. Global Natural Res., Inc.*, 898 F.2d 1015, 1017 (5th Cir. 1990) (“Summary judgments . . . must be granted if there is no need for a trial.”).

JURISDICTION AND VENUE

This Court has jurisdiction over the subject matter of this case pursuant to its federal question jurisdiction under 28 U.S.C. § 1331, Clean Water Act § 505(a)(1), 33 U.S.C. 1365(a)(1), and the Declaratory Judgment Act, 28 U.S.C. § 2201. Plaintiff is entitled to bring this suit under the CWA citizen suit provisions, which provide that “any citizen may commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1); CWA § 505(a)(1). CWA § 505 explains that “the term ‘effluent limitation or standard under this chapter’ means . . . an unlawful act under [CWA § 301(a)].” 33 U.S.C. § 1365(f); CWA § 505(f). Section 301(a) in turn provides “[e]xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.” 33 U.S.C. § 1311(a); *See generally, Sierra Club v. Cedar Point Oil Company*, 73 F.3d 546, 559-60 (5th Cir. 1996).

Venue is proper in this Court pursuant to Clean Water Act § 505(c)(1) as the district in which the source of the discharges is located, *i.e.* Hancock County, Mississippi. 33 U.S.C. § 1365(c)(1).

STATEMENT OF MATERIAL FACTS

The following indisputable material facts demonstrate that Plaintiff is entitled to partial summary judgment on the issue of liability as a matter of law:

- HCD owns more than 700 acres of property at the southwest quadrant of the Interstate 10 / Highway 603 interchange in Hancock County Mississippi, identified as parcels 134-0-18-002.000, 126-0-13-004.001, 134B-0-17-001.00, 133Q-0-08-003.00, 133-0-07-005.00, and 134F-0-17-002.00 in the Hancock County Land Rolls (the “Wetlands Property”).¹
- HCD’s development plans for the Wetlands Property were to build a project called the “Town of Stennis.”²
- The Wetlands Property “includes Wetlands” which are waters of the United States and through which HCD “caused ditches and canals to be created on the [Wetlands] Property that contain or have contained water with a continuous surface connection to Bayou Maron.”³

¹ HCD Answer at ¶ 31 (No. 17). A map of the parcels from the Hancock County Assessor’s website is attached at Exhibit A (“Ex. A”) and can be found at <http://www.hancockcountymiss.gov/assessor.htm> by clicking on the link to “geoportal web based mapping/GIS system” or directly at <http://www.geoportalmaps.com/atlas/hancock/>.

² See “Town of Stennis” Planning Description, at Exhibit B (“Ex. B”), formerly available at http://www.doverkohl.com/project_detail_pages/stennis.html. Color map and similar images currently available at <http://www.doverkohl.com/project.aspx?id=59&type=3>.

³ See Plaintiff’s requests for admissions nos. 1 and 2, sent on April 17, 2009 and noticed on April 20, 2009 (docket No. 31), attached at Exhibit C at pages 4-5 (“Ex. C”). HCD admitted these requests pursuant to Federal Rule of Civil Procedure 36(a)(3) (“[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.”) On May 8, 2009, the 18th day after notice of the request for admissions, this Court stayed discovery “until ruling on [HCD’s] Motion to Stay is entered.” (Docket “Minute Entry,” dated May 8, 2009.) This Court denied HCD’s Motion to Stay on November 16, 2009. (No. 54.) Accordingly, the thirty-day period for HCD to respond to GRN’s request for admission ended on December 2, 2009. HCD has never answered Plaintiff’s requests for admissions.

- On or before May 7, 2007, HCD began clearing, dredging, filling, and construction activities on the site (the “Construction Activities”).⁴
- The Construction Activities disturbed more than five acres of land or is part of a larger common plan of development that will ultimately disturb approximately 700 acres of land.⁵
- Storm water runoff from the areas disturbed by the Construction Activities have discharged on numerous occasions and continue to discharge into waters of the United States whenever there is a significant precipitation on the site.⁶
- The Construction Activities resulted in the direct deposit of fill material in waters of the United States.⁷
- HCD “did not apply for a permit under the Clean Water Act § 402” for the storm water discharges associated with the Construction Activities.⁸
- HCD “did not obtain an individual or general dredge and fill permit” under the Clean Water Act § 404 for the Construction Activities.⁹
- The Gulf Restoration Network has standing to bring this suit because *1*) “its members would otherwise have standing to sue in their own right,” *2*) “the interests it seeks to protect are germane to the organization’s purpose,” and *3*) “neither the claim asserted nor the relief requested requires the participation of individual members.” *Hunt v.*

Washington State Apple Adver. Comm’n, 432 U.S. 333, 343 (1977).

⁴ C. Schuengel Decl., attached at Exhibit D, ¶ 14 (“Ex. D”); L. Lang Decl., attached at Exhibit E, ¶ 10 (“Ex. E”).

⁵ C. Schuengel Decl., Ex. D at ¶¶ 7, 9-10, 14; L. Lang Decl., Ex. E at ¶¶ 10-15; “Town of Stennis” Planning Description, Ex. B.

⁶ C. Schuengel Decl., Ex. D at ¶ 19; L. Lang Decl., Ex. E at ¶ 16.

⁷ C. Schuengel Decl., Ex. D at ¶¶ 6, 11, 16-18; L. Lang Decl., Ex. E at ¶ 11-15.

⁸ HCD Answer at ¶¶ 36, 51.

⁹ HCD Answer at ¶ 33.

ARGUMENT

I. HCD IS VIOLATING THE CLEAN WATER ACT BECAUSE IT IS DISCHARGING POLLUTANTS INTO WATERS OF THE UNITED STATES WITHOUT THE REQUIRED PERMITS.

A company like HCD violates the Clean Water Act (“CWA”) § 301 when it *a*) discharges pollutants *b*) into “waters of the United States” *c*) from any point source, *d*) without the appropriate permits. 33 U.S.C. §§ 1311, 1362(7) & (12). This is because, unless the company complies with permit requirements under CWA § 402 and § 404, among others, “the discharge of any pollutant by any person shall be unlawful.” *Id.* § 1311(a). Congress defined “pollutant” broadly and included “dirt,” “sand,” and “dredged spoil,” among other things. 33 U.S.C. § 1362(6). Similarly, the Clean Water Act defines “pollution” as “the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.” *Id.* at § 1362(19). In this way, unless a company has a permit, Clean Water Act § 301 prohibits the runoff of storm water from a construction site (requiring a CWA § 402 permit) and the placement of dredge and fill materials into wetlands (requiring a CWA § 404 permit). Here, HCD is violating these two Clean Water Act requirements by *1*) discharging storm water runoff into waters of the United States without § 402 a permit, 33 U.S.C. § 1342(p), and *2*) discharging dredge and fill materials in wetlands without a § 404 permit, 33 U.S.C. § 1344.

A. HCD Is Violating the Clean Water Act Because It Is Discharging Pollutants into Waters of the United States without a § 402 Storm Water Permit.

1. The Storm Water Discharged from the Site Is a Pollutant from A Point Source because HCD’s Construction Activities are Industrial Activities.

HCD’s construction of the Town of Stennis – an industrial activity – without a § 402 permit for storm water discharges violates the Clean Water Act. Clean Water Act § 402 requires a permit for “stormwater discharges . . . associated with industrial activity.” 33 U.S.C. §

1342(p)(2)(B). “Industrial activity” includes “[c]onstruction activity including clearing, grading, and excavation” that results in “the disturbance” of five or more acres of land or “the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.” 40 C.F.R. § 122.26(b)(14)(x). Here, the Wetlands Property is over 700 acres. *See* Hancock County Assessor’s website, Ex. A. Photographs and eyewitness accounts show that HCD’s Construction Activities, including dredging and filling of ditches, berms, mounds, dams, canals, and roads, have disturbed more than five acres. *See* Decl. of C. Schuengel, Ex. D at ¶¶ 7, 9-10, 14; Decl. of L. Lang, Ex. E at ¶¶ 10-15. The plans for the Town of Stennis also show that those disturbances are part of a larger plan of development that would ultimately disturb as much as 700 acres. *See* “Town of Stennis” Planning Description, Ex. B. Therefore, HCD’s Construction Activities are “industrial activities.”

HCD’s industrial activities are associated with storm water discharge and constitute a discharge of pollutants. “Storm water means storm water runoff . . . and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13). “Storm water discharge associated with industrial activity . . . includes, but is not limited to, storm water discharges from . . . areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.” 40 C.F.R. § 122.26(b)(14). In this way, such discharges qualify as discharges of a pollutant under CWA § 301. *See Natural Res. Def. Council v. EPA*, 526 F.3d 591, 597 (9th Cir. 2008) (finding that “runoff generated while construction activities are occurring has potential for serious water quality impacts” and “the localized impacts of water quality may be severe because of high unit loads of pollutants, primarily sediments”).

Here, photographs and testimony demonstrate that HCD’s Construction Activities and its

“canals and ditches and the fill that comprises the dams, berms, mounds, and roads on the [Wetlands] Property remain in the wetlands,” are exposed to rain and storms, and “discharge pollutants into the wetlands of the [Wetlands] Property and into the Bayou Maron tributary, particularly when it rains.” Decl. of C. Schuengel, Ex. D at ¶¶ 18, 19; Decl. of L. Lang, Ex. E at ¶¶ 15, 16. These pollutant discharges are visible in Bayou Maron and its tributary by the “contrast between the light silt and sediment laden water with the darker, clearer water that was prevalent before construction began on the [Wetlands] Property.” Decl. of C. Schuengel, Ex. D at ¶ 11; *see* Decl. of L. Lang, Ex. E at ¶ 6.

Similarly, HCD’s industrial activity constitutes a point source. “By identifying Defendant’s construction activity on the Property, Plaintiff has sufficiently identified a ‘point source.’” *Cal. Sportfishing Prot. Alliance v. Diablo Grande, Inc.*, 209 F. Supp. 2d 1059, 1077 (E.D. Cal. 2002); *see also Sierra Club v. Abston Const. Co.*, 620 F.2d 41, 45 (5th Cir. 1980) (“A point source of pollution may also be present where . . . during periods of precipitation, erosion of spoil pile walls results in discharges into a navigable body of water by means of ditches, gullies and similar conveyances”). Therefore, HCD’s Construction Activities are industrial activities associated with storm water discharges and constitute discharges of pollutants from a point source.

2. *The Waters and Wetlands at Issue Are “Waters of the United States.”*

a. The Waters that Receive HCD’s Discharges Are “Waters of the United States.”

St. Louis Bay, the Jourdan River, Bayou LaCroix, Bayou Maron and its tributary are “waters of the United States.” “Waters of the United States” include, among other things,

(a) All waters . . . used . . . or . . . susceptible to use in interstate or foreign commerce . . . ;

...

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), . . . [and] ‘wetlands’ . . . the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

. . .
(e) *Tributaries* of waters identified in paragraphs (a) through (d) of this definition.

40 C.F.R. § 122.2 (emphasis added). The U.S. Supreme Court has described such waters to include “relatively permanent bod[ies] of water connected to traditional interstate navigable waters.” *Rapanos v. United States*, 547 U.S. 715, 742 (2006) (Scalia, J., plurality). Here, it is beyond dispute that St. Louis Bay, an inlet of the Gulf of Mexico, and the Jourdan River are “waters . . . used . . . in interstate or foreign commerce.” It is also beyond dispute that the connected waters of Bayou LaCroix, Bayou Maron, and the Bayou Maron tributary are all tributaries of St. Louis Bay and the Jourdan River. *See* Decl. of C. Schuengel, Ex. D at ¶¶ 7, 12; Decl. of L. Lang, Ex. E at ¶¶ 8, 9; U.S. Fish and Wildlife Service Wetlands Maps, attached at Exhibit G (overview) and Exhibit H (detail view) (“Ex. G” and “Ex. H,” respectively). Therefore, these waters are “waters of the United States” under federal jurisdiction.

Also, Bayou LaCroix and Bayou Maron are themselves navigable waters in the traditional sense, *e.g.* the Schuengels “have taken boats into . . . [them] . . . many times.” Decl. of C. Schuengel, Ex. D at ¶ 13; Decl. of L. Lang, Ex. E at ¶ 9. Therefore, because of their connection with the Jourdan River and St. Louis Bay, each bayou is independently “susceptible to use in interstate or foreign commerce” and, “could be used by interstate or foreign travelers for recreational purposes.” Therefore, Bayou LaCroix, Bayou Maron, and the Bayou Maron tributary are subject to federal jurisdiction.

b. The Wetlands that Receive HCD's Stormwater Discharges Are "Waters of the United States."

It is indisputable that the wetlands at issue are "waters of the United States" and subject to the Clean Water Act's requirements. The Corps has found that the wetlands of the Wetlands Property fall under the jurisdiction of the Clean Water Act, stating that "[t]hese wetlands [of the Wetlands Property] are waters of the U.S." Corps' Notice of Violation, dated November 2, 2007 (HCD May 5, 2009 Brief, ex. A, p. 1, No. 37-1). HCD also admits that the Wetlands Property "includes Wetlands" under the Corps' definition of wetlands and it "d[oes] not contest [the Corps] determination that the Property is subject to the Corps' jurisdiction." Plaintiff's Requests for Admissions, Ex. C at p. 4-5, ¶¶ 1, 3, *supra* at fn. 3.

The Supreme Court plurality opinion in *Rapanos* explained that federal jurisdiction includes wetlands adjacent to "a relatively permanent body of water connected to traditional interstate navigable waters [and that] ... has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins." *Rapanos*, 547 U.S. at 742 (2006), *quoted in U.S. v. Lucas*, 516 F.3d 316, 326 (5th Cir. 2008). "In other words, the Government has jurisdiction over waters that neighbor tributaries of navigable waters." *Lucas*, 516 F.3d at 326. The continuous surface connection of the wetlands at issue to traditional interstate navigable waters is also beyond dispute. The U.S. Fish and Wildlife Service maps confirm that the Wetland Property is dominated by "Freshwater Forested/Shrub Wetland." *See* Ex. G; Ex. H. And neighbors confirm that "the wetlands of the Property neighbor, border, lie adjacent to, and have a continuous surface connection with Bayou Maron, its tributary, Bayou LaCroix, the Jourdan River, and St. Louis Bay." Decl. of C. Schuengel, Ex. D at ¶ 12; Decl. of L. Lang, Ex. E at ¶ 8; *see* Ex. G; Ex. H. Even before the Construction Activities began, "it was difficult to see where the waters of Bayou Maron and its tributary stopped and the wetlands of

the [Wetlands] Property began.” Decl. of C. Schuengel, Ex. D at ¶ 10; *see* Decl. of L. Lang, Ex. E at ¶ 6. Since the commencement of the Construction Activities, “their waters have become indistinguishable.” *Id.* As HCD admits, it “caused ditches and canals to be created on the [Wetlands] Property that contain or have contained water with a continuous surface connection to Bayou Maron.” Plaintiff’s Requests for Admissions, Ex. C at p. 5, ¶ 2, *supra* at fn. 3; *see* “Town of Stennis” Planning Description, Ex. B; Decl. of L. Lang, Ex. E at ¶ 12.

Moreover, the wetlands that HCD has dredged and filled would be “waters of the United States” even without the Wetlands Property’s direct connection to Bayou Maron and its tributary because they are part of a wetlands system that is also adjacent to Bayou LaCroix. Wetlands that are “‘adjacent’ to traditional navigable waters,” are also “waters of the United States,” and “[f]inding a continuous surface connection is not required to establish adjacency.” Memo from the Corps and the U.S. EPA, “Clean Water Act Jurisdiction Following U.S. Supreme Court Decision in *Rapanos v. United States & Carabell v. United States*,” Dec. 2, 2008, at 5, available at http://www.usace.army.mil/CECW/Documents/cecwo/reg/cwa_guide/cwa_juris_2dec08.pdf (the “Corps/EPA Memo”). “Adjacent” means “bordering, contiguous, or neighboring.” *Id.* Here, U.S. Fish and Wildlife Service Wetlands Maps show that the wetlands of the Wetlands Property are part of a larger system of wetlands that extends past Bayou Maron and its tributary and along the banks of Bayou LaCroix. *See* Ex. G (overview); Ex. H (detail view). Therefore, the wetlands on the Wetlands Property are “waters of the United States” under the *Rapanos* plurality and Corps tests.

The wetlands on the Wetlands Property are also under federal jurisdiction because they meet the less restrictive “significant nexus” test of the *Rapanos* concurrence, 547 U.S. at 779

(Kennedy, J., concurring).¹⁰ Here, the effects of the Construction Activities show that these wetlands have a significant nexus to downstream navigable waters. Neighbors explain that “before construction began on the Property, the waters of Bayou Maron and the Bayou Maron tributary were generally dark colored and clear.” Decl. of C. Schuengel, Ex. D at ¶ 11; Decl. of L. Lang, Ex. E at ¶ 7. Since the Construction Activities in the wetlands, however, photographs show that “their waters are often lighter colored and full of silt and dredged material.” Decl. of C. Schuengel, Ex. D at ¶ 11; *see* Decl. of L. Lang, Ex. E at ¶ 7. Because there is a significant nexus between the wetlands of the Wetlands Property and Bayou Maron and its tributary, the wetlands at issue are “waters of the United States.”

3. *HCD Failed to Obtain the Required Clean Water Act § 402 Storm Water Discharge Permit.*

It is uncontested that HCD “failed to obtain a § 402 [storm water discharge] permit.”

¹⁰ The *Rapanos* Court did not establish a single controlling test for what constitutes “navigable waters.” *See Rapanos*, 547 U.S. 715. In his concurring opinion, Justice Kennedy disagreed with the plurality’s test for determining what constitutes “navigable water” and asserted that the proper question is whether the wetlands have a “significant nexus” with federal waters. *Rapanos*, 547 U.S. at 759. Since *Rapanos*, courts are split on whether to apply either test or only Kennedy’s less restrictive “significant nexus” test. *Compare United States v. Bailey*, 571 F.3d 791, 799 (8th Cir. 2009) (“[T]he Corps has jurisdiction over wetlands that satisfy either the plurality or Justice Kennedy’s test.”), and *United States v. Johnson*, 467 F.3d 56, 66 (1st Cir. 2006) (“The federal government can establish jurisdiction over the target sites if it can meet either the plurality’s or Justice Kennedy’s standard as laid out in *Rapanos*.”), and *United States v. Cundiff*, 555 F.3d 200, 210 (6th Cir. 2009) (“jurisdiction is proper . . . under both Justice Kennedy’s and the plurality’s tests, so we leave ultimate resolution of the . . . debate to a future case”), with *United States v. Gerke Excavating, Inc.*, 464 F.3d 723, 724 (7th Cir. 2006) (“When a majority of the Supreme Court agrees only on the outcome of a case and not on the ground for that outcome, lower-court judges are to follow the narrowest ground to which a majority of the Justices would have assented if forced to choose. . . . In *Rapanos*, that is Justice Kennedy’s ground.” (citing *Marks v. United States*, 430 U.S. 188, 193 (1977))), and *United States v. Moses*, 496 F.3d 984, 990 (9th Cir. 2007) (finding that Justice Kennedy’s opinion is “the controlling rule of law” because he concurred in the judgment on the narrowest grounds). In *Lucas*, the Fifth Circuit addressed both the plurality’s “continuous surface connection” test and Justice Kennedy’s “significant nexus” test to determine whether wetlands were under federal jurisdiction. 516 F.3d at 327.

Complaint at ¶ 51 (No. 1); HCD Answer at ¶¶ 36, 51 (“HCL admits that it did not obtain a § 402 permit covering the land identified in the Complaint”) (No. 17). Indeed, HCD failed to even apply for a § 402 permit. HCD Answer at ¶ 36. Therefore, HCD violated and continues to violate CWA §§ 301 and 402 because its Construction Activities are unpermitted industrial activities associated with storm water discharges into “waters of the United States.”

B. HCD Is Violating the Clean Water Act Because It Dredged and Filled Waters of the United States Without a § 404 Permit.

HCD’s dredge and fill activities in “waters of the United States” without a CWA § 404 permit violated and continue to violate the Clean Water Act. The law states that “[a]ny discharge of dredged or fill materials into . . . ‘waters of the United States’ . . . is forbidden unless authorized by a permit issued by the Corps of Engineers pursuant to the Clean Water Act § 404, 33 U.S.C. § 1344.” *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 123 (1985).

1. HCD Conducted Dredge and Fill Activities in Wetlands on the Wetlands Property.

It is indisputable that HCD performed dredge and fill activities on the Wetlands Property. “The term dredged material means material that is excavated or dredged from waters of the United States.” 33 C.F.R. § 323.2(c). The “term discharge of dredged material means . . . [a]ny addition, including redeposit . . . , of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.” *Id.* at § 323.2 (d)(1)(iii). Additionally, “the term fill material means material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States. . . . Examples of such fill material include . . . materials used to create any structure or infrastructure” *Id.* at §

323.2(e). “The term discharge of fill material means the addition of fill material into waters of the United States.” *Id.* at § 323.2(f).

Here, witnesses are “familiar with [HCD’s] construction and wetland dredging and filling activities taking place on [the Wetlands] [P]roperty.” Decl. of C. Schuengel, Ex. D at ¶ 6; Decl. of L. Lang, Ex. E at ¶ 3. Photographs show several examples of the structures in the wetlands that HCD has built with dredged and fill materials. Decl. of C. Schuengel, Ex. D at ¶¶ 11, 14. Neighbors observed HCD use “bulldozers and backhoes and other excavating and land clearing equipment in wetland areas of the [Wetlands] Property.” Decl. of C. Schuengel, Ex. D at ¶ 17; Decl. of L. Lang, Ex. E at ¶ 14. The “equipment operators performing the work on the [Wetlands] Property... informed [a neighbor] that the project included, among other things, placing a ditch/canal running east to west and tying into Bayou Maron.” Decl. of L. Lang, Ex. E at ¶ 11. Witnesses observed and discussed with HCD “the berm they were constructing . . . [and] . . . ditches that [HCD] had dug nearby and were now filling . . .” Decl. of C. Schuengel, Ex. D at ¶ 16; Decl. of L. Lang, Ex. E at ¶ 13. Accordingly, HCD conducted dredge and fill activities in the wetlands of the Wetlands Property.

2. *The Wetlands that HCD has Dredged and Filled Are “Waters of the United States.”*

It is indisputable that the wetlands at issue are “waters of the United States” and subject to the Clean Water Act’s requirements. As discussed in section I.A.2.b at pages 10-12 above, the wetlands at issue meet both the *Rapanos* plurality’s “continuous connection” test and the *Rapanos* concurrence’s “significant nexus” test.¹¹ The Corps has found that the wetlands that HCD has dredged and filled are “waters of the United States.”¹² HCD has not disputed the

¹¹ *Supra* pp. 10-12.

¹² *Supra* pp. 11-12.

Corps' finding that these wetlands fall under federal jurisdiction.¹³ Also, HCD admits that the Wetlands Property includes wetlands and that canals on the property connect directly with Bayou Maron.¹⁴ Accordingly, HCD's dredge and fill activities are in "waters of the United States."

3. *HCD Has Failed to Obtain a CWA § 404 Permit for the Dredge and Fill Activities in "Waters of the United States."*

It is uncontested that HCD "failed to obtain a § 404 permit" for the Construction Activities. Complaint at ¶ 49; Answer at ¶ 49 ("HCL admits that it did not obtain a § 404 permit covering the land identified in the Complaint . . .") (No. 17). That failure is ongoing because "unpermitted discharge of dredged or fill materials into wetlands on the site is a continuing violation for as long as the fill remains." *U.S. v. Reaves*, 923 F. Supp. 1530, 1534 (M.D. Fla. 1996); *Sasser v. EPA*, 990 F.2d 127, 129 (4th Cir. 1993) ("Each day the pollutant remains in the wetlands without a permit constitutes an additional day of violation."). HCD continues to violate § 404 because the "canals and ditches and the fill that comprises the dams, berms, mounds, and roads on the [Wetlands] Property remain in the wetlands." Decl. of C. Schuengel, Ex. D at ¶ 18; *see* Decl. of L. Lang, Ex. E at ¶ 15. Therefore, this Court should find that HCD violated and continues to violate CWA §§ 301 and 404 because the dredge and fill activities are unpermitted and remain in the wetlands of the Wetlands Property.

II. PLAINTIFF HAS STANDING TO PROSECUTE THIS ACTION.

The Supreme Court has recognized that an organization has standing to bring suit on behalf of its members when *1*) "its members would otherwise have standing to sue in their own right," *2*) "the interests it seeks to protect are germane to the organization's purpose," and *3*) "neither the claim asserted nor the relief requested requires the participation of individual

¹³ *Supra* p. 10.

¹⁴ *Supra* p. 11.

members.” *Hunt v. Washington State Apple Adver. Comm’n*, 432 U.S. 333, 343 (1977). Plaintiff Gulf Restoration Network meets all standing requirements to bring suit on behalf of its members.

A. Plaintiff’s Members Have Standing to Sue in Their Own Right.

In order for an individual to have standing to sue under Article III of the Constitution, the individual must show *1*) he has suffered an “injury in fact,” *2*) the injury is “fairly traceable to the challenged action of the defendant,” and *3*) it is likely that the “injury will be redressed by a favorable decision.” *Friends of the Earth v. Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 180-81 (2000). Plaintiff’s members satisfy all standing requirements in their own right.

1. Plaintiff’s Members Suffer Injury in Fact from HCD’s Illegal Clearing, Dredging, and Filling of Wetlands and the Construction Activities.

For environmental citizen suits, “[t]he relevant showing for purposes of Article III standing . . . is not injury to the environment but injury to the plaintiff.” *Laidlaw*, 528 U.S. at 181. Plaintiff’s members have incurred and continue to incur injuries in fact because HCD’s Construction Activities have caused and continue to cause flooding and pollutant discharges that “impair [their] ability to recreate in and around [their] yard and reduce [their] enjoyment of [their] home.” Decl. of C. Schuengel, Ex. D at ¶ 24; Decl. of K. Schuengel, Ex. F at ¶ 13.

The requirement that a Plaintiff demonstrate injury in fact “is designed to limit access to the courts to those ‘who have a direct stake in the outcome.’” *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 556 (5th Cir. 1996), *cert. denied*, 519 U.S. 811 (1996) (citing *Valley Forge Christian College v. Ams. United for Separation of Church and State*, 454 U.S. 464, 473 (1982)). An “injury in fact” is defined as “an invasion of a judicially cognizable interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.” *Bennett v. Spear*, 520 U.S. 154, 167 (1997). The Supreme Court has long recognized that the interest invaded “may reflect aesthetic, conservational, and recreational as

well as economic values.” *Sierra Club v. Morton*, 405 U.S. 727, 738 (1972) (citations omitted). Therefore, individuals with environmental claims “adequately allege injury in fact when they aver that they use the affected area and are persons ‘for whom . . . the values of the area will be lessened’ by the challenged activity.” *Laidlaw*, 528 U.S. at 183 (quoting 405 U.S. at 735).

In *Laidlaw*, the Supreme Court found that the declarants had standing because their concerns “that the water was polluted” from the illegal discharges directly affected their interests. *Id.* at 181-82; see *Cedar Point*, 73 F.3d at 557 (noting that the injury itself “need not be large” to meet the requirement for standing) (citations omitted). The *Laidlaw* declarants lived near a water body polluted with discharge from neighboring industrial activity and would have “used . . . it for recreational purposes . . . were it not for [their] concerns about illegal discharges.” *Laidlaw*, 528 U.S. at 181-82. The Supreme Court concluded that the declarants “adequately documented injury in fact” because “they aver that they use the affected area and are persons ‘for whom the aesthetic and recreational values of the area will be lessened’ by the challenged activity.” *Laidlaw*, 528 U.S. at 183 (citing *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)).

Here, GRN members Kevin and Chrissy Schuengel’s economic, recreational, aesthetic, and residential interests are adversely affected by the violations at issue. The Schuengels’ home and property sit within 200 yards of the Wetlands Property and Construction Activities on that property. See Decl. of C. Schuengel, Ex. D at ¶ 7; Decl. of K. Schuengel, Ex. F at ¶ 7. The Schuengels enjoy and use their property for “growing vegetables, raising chickens and dogs, planting flowers, and having family gatherings where children play.” Decl. of C. Schuengel, Ex. D at ¶ 5; Decl. of K. Schuengel, Ex. F at ¶ 5. As a result of the hydrological changes in the area caused by HCD’s Construction Activities, the Schuengels are no longer able to use their property

as they have in the past and this has “reduced [their] enjoyment of [their] home.” Decl. of C. Schuengel, Ex. D at ¶¶ 24-25; Decl. of K. Schuengel, Ex. F at ¶¶ 13-14.

Since HCD’s Construction Activities began on the Wetlands Property, the Schuengels’ property has “started to flood during mild rains ... [and] ... the flooding to [their] property has increased as the construction and filling of wetlands on the [Wetlands] Property has continued.” Decl. of C. Schuengel, Ex. D at ¶ 21; Decl. of K. Schuengel, Ex. F at ¶ 10. Where the Schuengels once gardened and allowed animals to graze, the flood waters from the Wetlands Property has “washed [away] soil and plants, . . . flooded the dog houses, and inundated [the] chicken coop and shed.” Decl. of C. Schuengel, Ex. D at ¶ 21; Decl. of K. Schuengel, Ex. F at ¶ 10. The increased water flow from the Wetlands Property has also caused “mosquitoes, rats, alligators, and poisonous snakes” to invade the Schuengels’ property. Decl. of C. Schuengel, Ex. D at ¶ 22; Decl. of K. Schuengel, Ex. F at ¶ 11. The Schuengels “used to allow children to play [on their] property, . . . but do not [anymore] because [they] no longer feel it is safe.” Decl. of C. Schuengel, Ex. D at ¶ 23; Decl. of K. Schuengel, Ex. F at ¶ 12. The Schuengels enjoyed using their land for “garden[ing], ... allow[ing] animals to roam, ... and ... children to play ... and would continue to do so, but do not because [they] no longer feel it is safe because of the flooding and its repercussions.” Decl. of C. Schuengel, Ex. D at ¶¶ 22, 23.

The Construction Activities also impair the Schuengels’ aesthetic interests at home. The Schuengels each explain that the Wetlands Property is visible from their property and is located “less than 200 yards from [their] own property line... [with] ... no structures or improvements between [their] property and the [Wetlands] Property.” Decl. of C. Schuengel, Ex. D at ¶ 7; Decl. of K. Schuengel, Ex. F at ¶ 7. “In the past, [they] enjoyed looking at the view from [their] dining room and back porch.” Decl. of C. Schuengel, Ex. D at ¶ 25; Decl. of K.

Schuengel, Ex. F at ¶ 14. As a result of the Construction Activities, the Schuengels “no longer enjoy that view as much as [they] did before construction on the [Wetlands] Property because [they] see a berm on the [Wetlands] Property that runs the length of [their] property, detracting from the beauty of the view.” *Id.* The Schuengels now “enjoy the view less.” *Id.*

HCD’s Clean Water Act violations have also impaired and will continue to impair Plaintiff’s members’ use and enjoyment of the surrounding area, including Bayou Maron and its tributary. For example, “[s]ince the construction activities on the [Wetlands] Property began, Bayou La Croix Road floods from the northern side when it rains.” Decl. of C. Schuengel, Ex. D at ¶ 28; Decl. of K. Schuengel, Ex. F at ¶ 17. The Schuengels live on and use this road regularly, and their “use and enjoyment of Bayou La Croix has been impaired by the flooding on the road.” *Id.* Also, HCD’s Clean Water Act violations have “caused the Bayou Maron [and its] tributary to widen ... [and] ... allowed dredged material and silt to enter Bayou Maron.” Decl. of C. Schuengel, Ex. D at ¶ 11; Decl. of L. Lang, Ex. E at ¶ 7. The Schuengels live within a mile of Bayou Maron and for years have enjoyed it regularly for “recreational purposes, including-birdwatching, site seeing, and boating.” Decl. of C. Schuengel, Ex. D at ¶ 3; Decl. of K. Schuengel, Ex. F at ¶ 3. The Schuengels’ “use and enjoyment of Bayou Maron and the Bayou Maron tributary has been impaired by the increased water flow and sediment pollution caused by the clearing, dredging and filling of wetlands on the [Wetlands] Property” because “the sediment that comes from the [Wetlands] Property . . . mars the appearance and shape of [Bayou Maron and its tributary], making them uglier and less healthy looking streams.” Decl. of C. Schuengel, Ex. D at ¶ 27; Decl. of K. Schuengel, Ex. F at ¶16. “Also, seeing both Bayou Maron and its tributary widened and/or deepened saddens” the Schuengels so that they “no longer enjoy

[Bayou Maron and its tributary's] beauty in the same way that [they] did before the construction on the [Wetlands] Property.” *Id.*

Like the *Laidlaw* declarants’ use of an area, the Schuengels’ use of their property and the surrounding area is directly and adversely affected by the Clean Water Act violations. Therefore, Plaintiff’s members suffer a concrete, actual, and imminent harm as a result of HCD’s Clean Water Act violations, satisfying the “injury in fact” requirement for Article III standing .

2. *Plaintiff’s Members’ Injuries are Fairly Traceable to the Challenged Action.*

The Schuengels’ injuries are fairly traceable to HCD’s actions. The Fifth Circuit has found that injuries are fairly traceable to an action when “a defendant has (1) discharged some pollutant in concentrations greater than allowed by its permit (2) into a waterway in which the plaintiffs have an interest that is or may be adversely affected by the pollutant and that (3) the pollutant causes or contributes to the kinds of injuries alleged by the plaintiffs.” *Sierra Club v. Cedar Point Oil Co. Inc.*, 73 F.3d 546, 557 (5th Cir. 1996) (citing *PIRG of New Jersey, Inc. v. Powell Duffryn Terminals, Inc.*, 913 F.2d 64, 72 (3rd Cir. 1990) (“A plaintiff need not prove causation with absolute scientific rigor The “fairly traceable” requirement . . . is not equivalent to a requirement of tort causation.”)).

3. *This Court has the Authority to Redress Plaintiff’s Members’ Injuries.*

The final element of standing requires an individual to show that it is likely that the “injury will be redressed by a favorable decision.” *Laidlaw*, 528 U.S. at 180-81. This court has the authority to order injunctive relief and enjoin defendants from actions in violation of federal law. *Rollins Envtl. Svcs., Inc. v. Parish of Saint James*, 775 F.2d 627, 637 (5th Cir. 1985). In sum, because Plaintiff’s members have suffered actual injuries that are fairly traceable to HCD’s actions that this Court can redress, they independently meet the requirements for standing.

B. The Interests Plaintiff Seeks To Protect Are Germane to the Organization’s Purpose.

Plaintiff meets the requirement that the interests an organization seeks to protect must be germane to its purpose. *See Hunt*, 432 U.S. at 343. “Whether an association has standing to invoke the court’s remedial power on behalf of its members depends in substantial measure on the nature of the relief sought.” *Warth v. Seldin*, 422 U.S. 490, 515 (1975). “If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured.” *Id.* Plaintiff is a “network of environmental, social justice, and citizens’ groups and individuals committed to restoring the Gulf of Mexico to an ecologically and biologically sustainable condition.” Decl. of C. Sarthou at ¶ 4, attached at Exhibit I (“Ex. I”). “GRN’s mission is to protect and restore the resources of the Gulf Region for future generations.” Decl. of C. Sarthou, Ex. I at ¶ 6. Here, Plaintiff is seeking to protect its members’ clean water and Gulf area wetlands.

C. This Case Does Not Require the Participation of the Individual Members of Plaintiff.

The nature of this case does not require the participation of Plaintiff’s individual members. A lawsuit brought by an organization that “do[es] not seek monetary damages or particularized relief limited to a single person or group ... does not require the participation of individual members of the organization.” *St. Bernard Citizens for Env’tl. Quality, Inc. v. Chalmette Refining*, 354 F. Supp. 2d 697, 701 (E.D. La. 2005); *see Hunt*, 432 U.S. at 344 (“neither the [claim asserted] nor the request for declaratory and injunctive relief requires individualized proof and both are thus properly resolved in a group context.”). Because Plaintiff

seeks injunctive relief that is not particularized to an individual or group, the nature of this case does not require the participation of Plaintiff's individual members.

CONCLUSION

For the foregoing reasons, this Court should GRANT Plaintiff Gulf Restoration Network's Motion for Partial Summary Judgment.

Respectfully submitted this 13th day of July, 2010,

/s Elizabeth Livingston de Calderón

Elizabeth Livingston de Calderón, LA Bar # 31443
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, LA 70118
ph: (504) 865-5789, dir: (504) 862-8819
fax: (504) 862-8721
email: ecaldero@tulane.edu

Robert Wiygul
1025 Division Street, Suite C
Biloxi, MS 39530
ph: (228) 374-0700
fax: (228) 374-0725
email: Robert@waltzerlaw.com

Counsel for Plaintiff, Gulf Restoration Network

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing request has been served upon the following counsel of record by electronic means on July 13th, 2010:

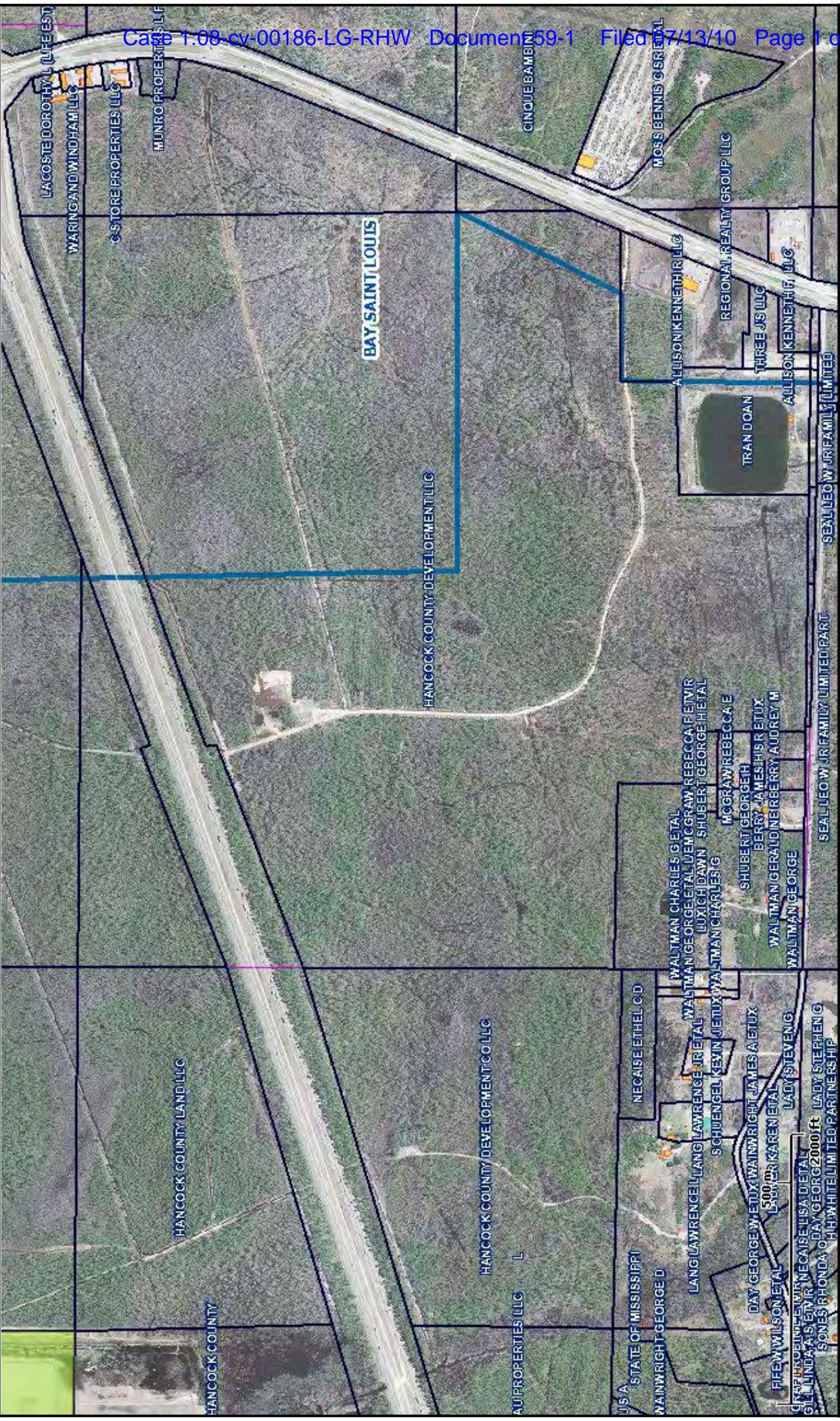
Christopher M. Carron
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

Roderick Mark Alexander, Jr.
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

Terese T. Wyly
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931

/s Elizabeth Livingston de Calderón
Elizabeth Livingston de Calderón

Hancock County Development Parcels

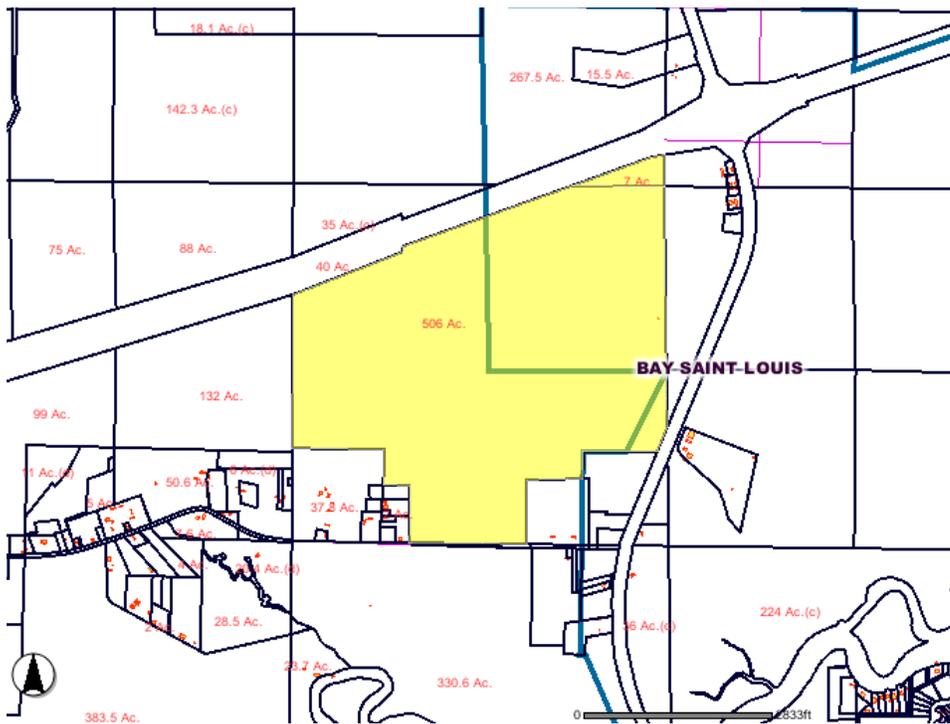


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Selected Parcel Information

PARCEL NUMBER:	134 -0-18-002.000
OWNER NAME:	HANCOCK COUNTY DEVELOPMENT LLC
OWNER ADDRESS:	P O BOX 91206
OWNER CITY:	MOBILE
OWNER STATE:	AL
ADDRESS (Physical Address):	6300 BAYOU LACROIX RD
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BASE AREA:	0
IMP. VALUE:	0
LAND VALUE:	170522
ESTIMATED TAX:	2377.74
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DEED PAGE:	345
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LATITUDE:	30.3485615246

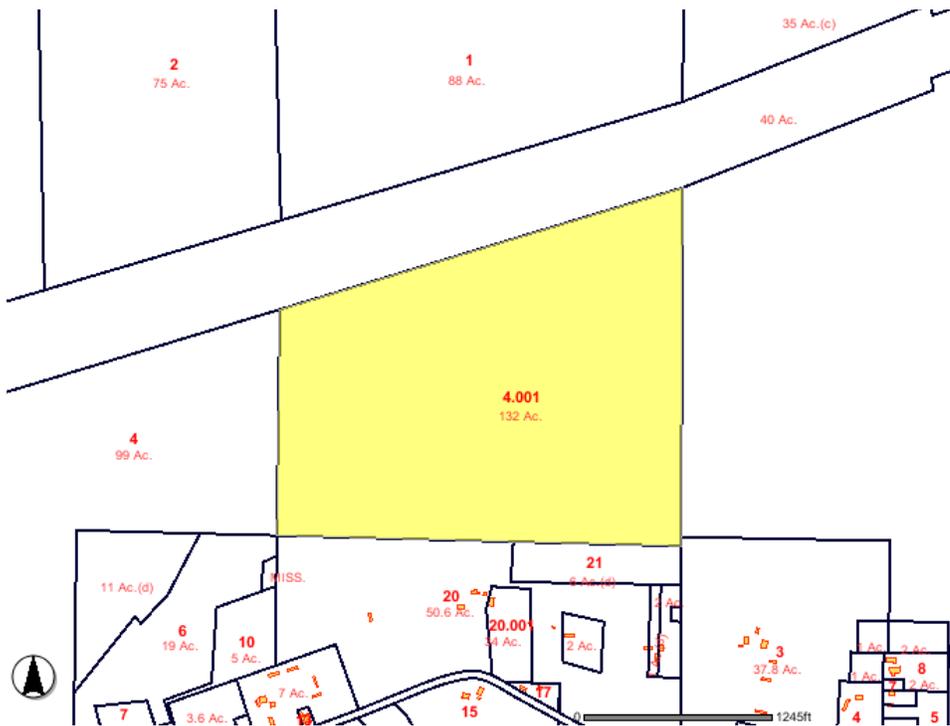
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Selected Parcel Information

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OWNER CITY:	MOBILE
OWNER STATE:	AL
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IMP. TYPE:	
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BASE AREA:	0
IMP. VALUE:	0
LAND VALUE:	42262
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DEED PAGE:	345
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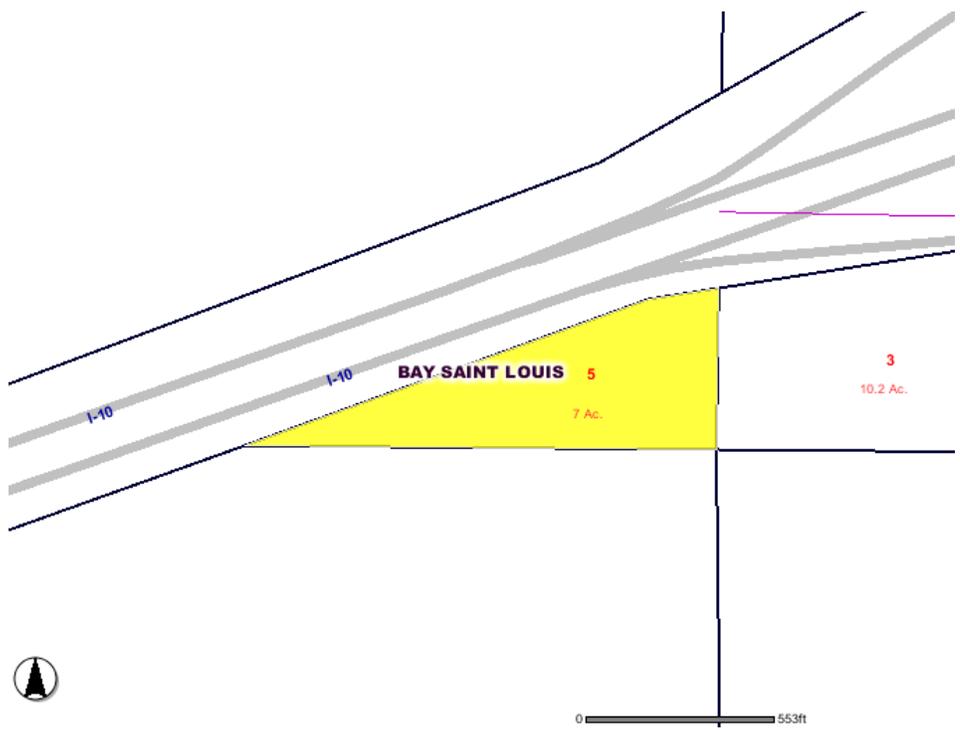
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OWNER CITY:	MOBILE
OWNER STATE:	AL
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BASE AREA:	0
IMP. VALUE:	0
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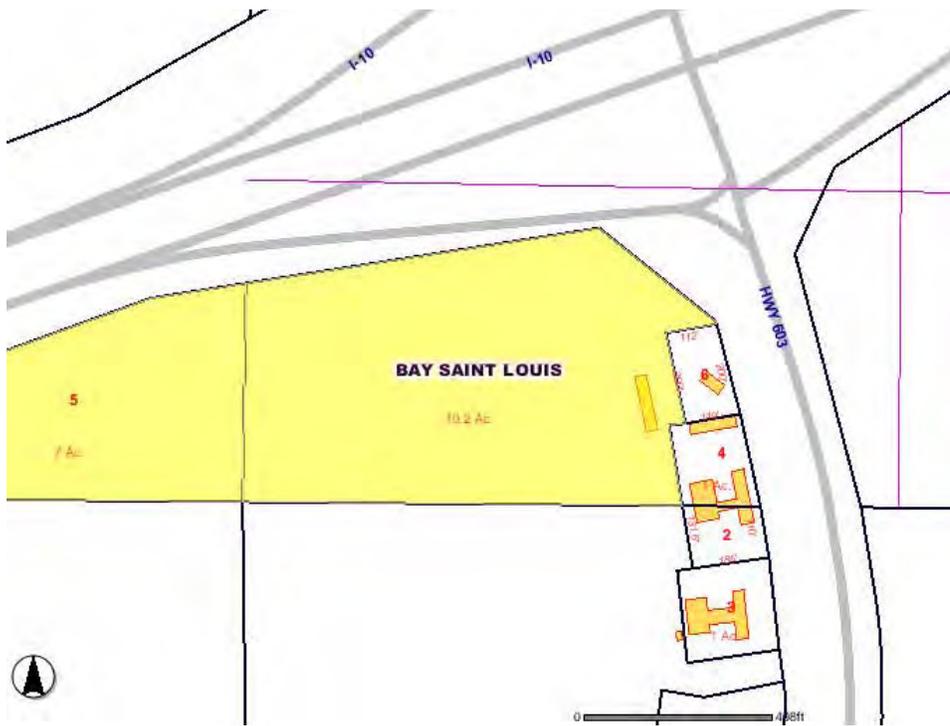
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Selected Parcel Information

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OWNER CITY:	MOBILE
OWNER STATE:	AL
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DEED PAGE:	345
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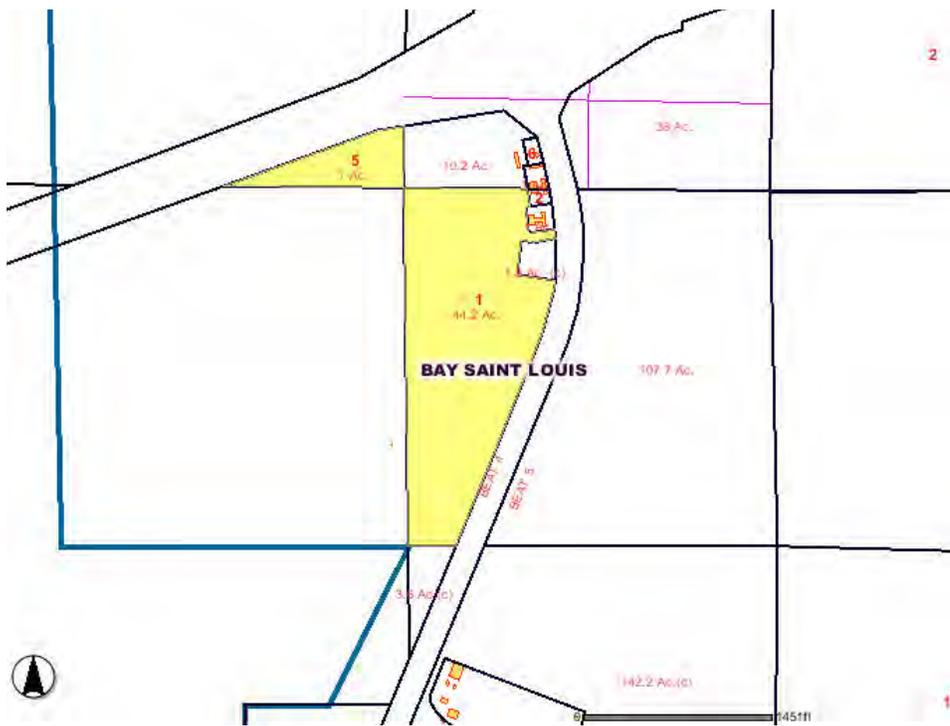
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Selected Parcel Information

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OWNER CITY:	MOBILE
OWNER STATE:	AL
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DEED PAGE:	345
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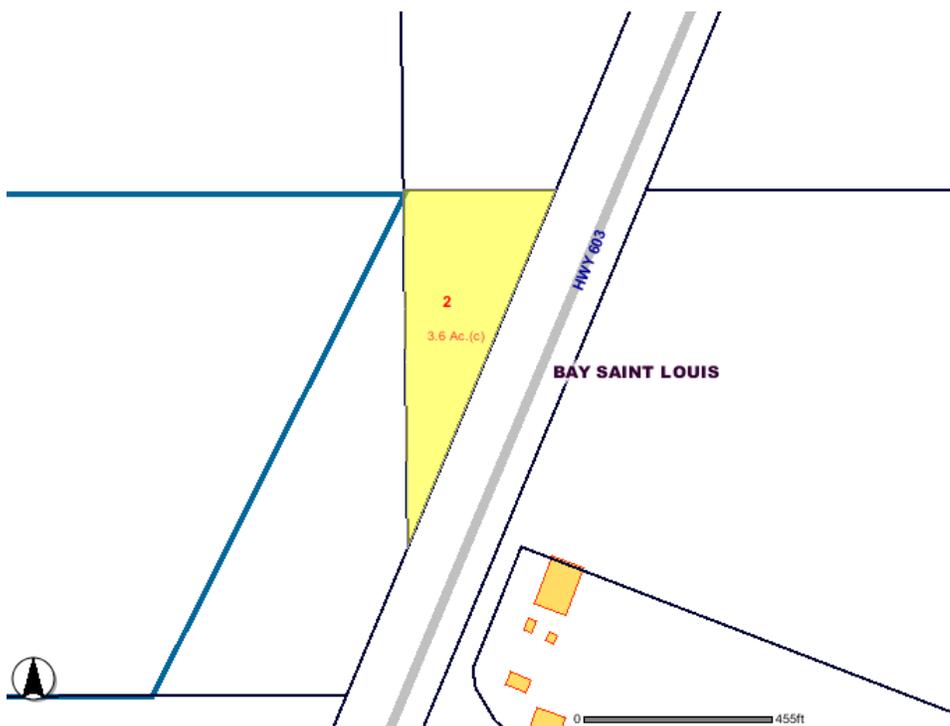
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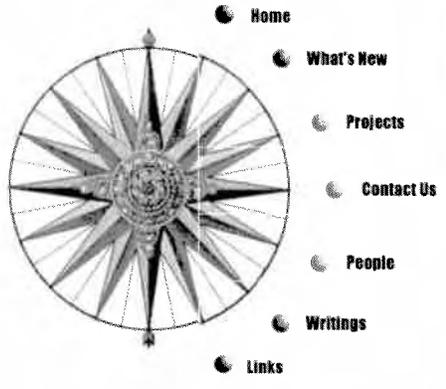


Selected Parcel Information

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OWNER CITY:	MOBILE
OWNER STATE:	AL
ADDRESS (Physical Address):	12961 HWY 603
IMP. TYPE:	
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DEED PAGE:	
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DOVER, KOHL & PARTNERS
town planning

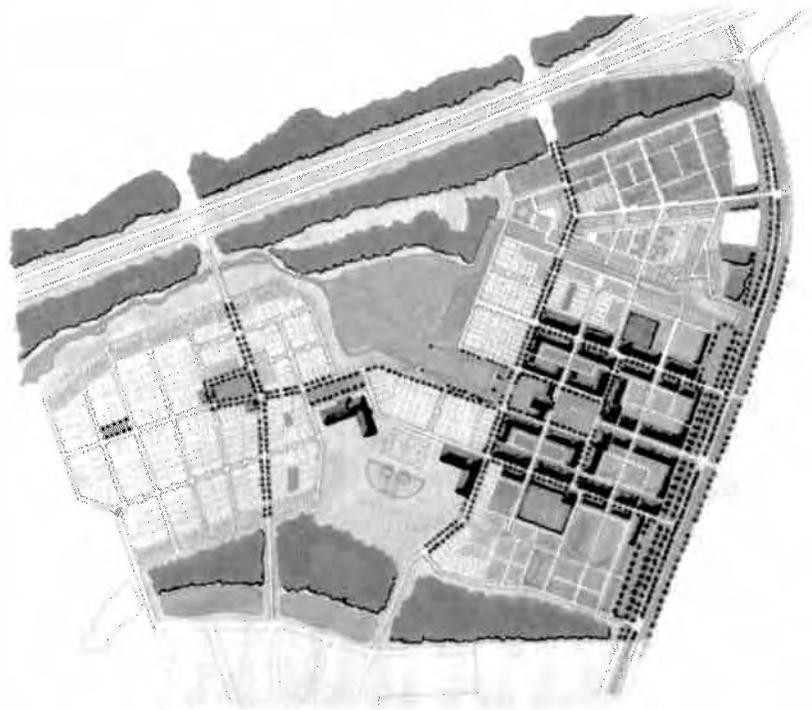
Town of Stennis
A New Town in Hancock County, Mississippi



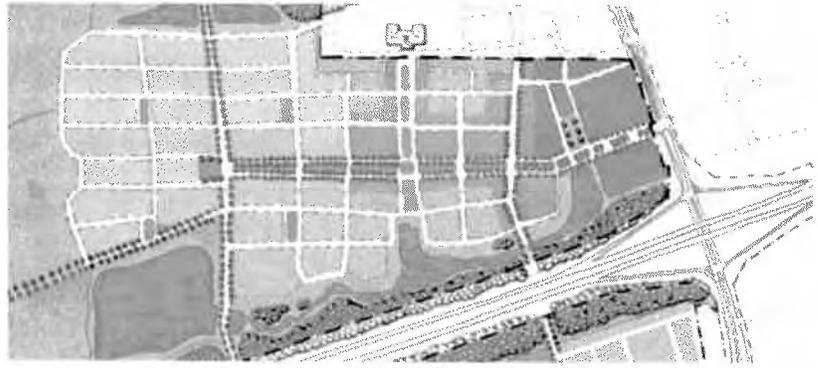
The architecture for the Town of Stennis respects the character and building traditions of coastal Mississippi, pulling in examples from nearby Bay St. Louis, Mandeville, Pass Christian and New Orleans. The small scale intimate streets create inherently walkable, livable and loveable places.



Partners, Joe Kohl & Victor Dover discuss alignment of waterfront and canal for the Town Center.



The first two neighborhoods in Stennis.



The conceptual arrangement for Stennis Technology Park to the north of I-10.



Victor Dover and team explore site conditions with environmental consultant Barry Vittor during June 2005 charrette.



Stennis Town Center

The Town Center features a County Courthouse Annex site and large lake. The Town Center provides new retail services for Hancock County and includes new residential housing options for the region.



Village Greens abut lakes, canals, and other water features throughout the Town and provide numerous gathering places for new residents to congregate.

**back
to
top**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

Gulf Restoration Network,)	Case Number 1:08-CV-00186
)	
Plaintiff,)	
)	
Versus)	Judge Louis Guirola, Jr.
)	
Hancock County Development, LLC and)	
Joshua Ladner,)	Magistrate Judge Robert H. Walker
)	
Defendants,)	
)	

**PLAINTIFFS' FIRST SET OF INTERROGATORIES AND REQUESTS
FOR PRODUCTION TO HANCOCK COUNTY DEVELOPMENT**

Pursuant to Rules 26(d)(1), 33, 34 and 36 of the Federal Rules of Civil Procedure and Local Rule 26.1(A)(4), Plaintiff Gulf Restoration Network, (“GRN”) submits the following interrogatories, requests for production, and requests for admissions to Defendant Hancock County Development, LLC.

DEFINITIONS

1. The term “**HCD**” refers to Hancock County Development, L.L.C., also known as Hancock County Land, L.L.C.
2. The term “**Property**” refers to the property listed as parcels 134-0-18-002.000, 126-0-13-004.001, 134B-0-17-001.000, 133Q-0-08-003.000, 133-0-07-005.000, and 134G-0-17-002.000 in the Hancock County land rolls in and near Bay St. Louis, Mississippi.

3. The term “**document**” means any “writing,” “recording,” or “photograph” as defined by Federal Rule of Evidence 1001, and also any recorded or graphic matter whatsoever, however produced or reproduced.

4. The term “**identify**,” when used in reference to *documents*, means: a) state the type of document (*e.g.*, letter, memorandum, agreement, photograph); b) state the title, if any, of the document; c) describe the subject and contents of the document; d) state the dates it was prepared, signed, sent, and received; e) identify any and all signatories and authors of the document, including any individual who contributed to its preparation; and f) identify all intended and actual recipients of the document.

5. The term “**identify**,” when used in reference to *communications*, means: a) state the full name, address, and telephone number of the person who initiated the communication; b) state the full name, address, and telephone number of the person to whom the communication was made; c) state the full name, address, and telephone number of any individuals present at the time of the communication; d) state the date and time of the communication; e) state the means by which the communication was made; and f) and describe the substance of the communication.

6. The terms “**identify**” or “**identity**” when applied to something besides a document or a communication means to describe the item with particularity. Such description should include, where applicable, name of each individual actor, owner, operator, possessor, date of purchase, manufacture, production or procurement, location, size, quantity or volume, number, serial number, color, date of disposal, sale, or loss, the names and form of entity, and other parameters or descriptive details sufficient to distinguish the item or activity from similar items and activities or to allow the reader of the description to recognize the item or activity.

7. The terms “**describe**” and “**state**” mean to specify in detail and to particularize the content of the answer to the question and not just to state the reply in summary or outline fashion.

8. The term “**Wetlands**” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

9. “**Factual basis**” means a complete and detailed description of all alleged facts, including the identification of the source or sources of such alleged facts, which support an argument or legal position.

10. “**Affirmative defenses**” means each and every affirmative defense stated in HCD’s Answer dated February 18, 2009.

INSTRUCTIONS

If anything is deleted from a document produced in response to an interrogatory or request for production, please state the reason for the deletion and the subject matter of the deletion.

If any document is withheld pursuant to an objection or claim of privilege, please produce a log of privileged documents identifying each withheld document by stating:

- (1) the name(s) and affiliation(s) of the document’s author(s) or originator(s);
- (2) the name(s) and affiliation(s) of the document’s addressee(s);
- (3) the document’s date;
- (4) the document’s title and subject matter;

(5) the name(s) and affiliation(s) of the present or last known custodian(s) of the original document or copies thereof;

(6) the current or last known business and residence addresses of such custodian(s); and

(7) the name(s) and affiliation(s) of all recipients of copies of the document.

In addition, you shall state the basis upon which the objection is raised or the privilege is claimed.

If any information requested in these interrogatories or requests for production is withheld pursuant to an objection or claim of privilege, please identify the specific interrogatory and subparagraph(s) requesting the withheld information, explain the basis upon which the objection is raised or the privilege is claimed, and identify all persons having knowledge of the withheld information.

Please answer all interrogatories and requests for production under oath, and provide verification from appropriate representatives of the defendants to support these answers. The verification of an attorney will not satisfy the Federal Rules of Civil Procedure.

These requests for production of documents cover all information and documents in your possession, control, or custody or in that of your officials, employees, agents, consultants, servants, contractors, attorneys and assigns.

REQUESTS FOR ADMISSIONS

Request for Admission No. 1.

Please admit that the Property includes Wetlands.

Request for Admission No. 2.

Please admit that HCD caused ditches and canals to be created on the Property that contain or have contained water with a continuous surface water connection to Bayou Maron.

Request for Admission No. 3.

Please admit that HCD did not contest the U.S. Army Corps of Engineers's (the "Corps") November 2, 2007 determination that the Property is subject to the Corps' jurisdiction.

INTERROGATORIES

Interrogatory No. 1.

Please state the factual basis for the Second Separate and Additional Defense referenced at page 10 of HCD's Answer in this matter.

Interrogatory No. 2.

Please identify the "certain activities" that "HCD or its agents" and its "subcontractor" engaged in on "some portions" of the Property that HCD admitted to in paragraphs 30 and 32 of its Answer, including, but not limited to, each specific activity, the purpose of each activity, the equipment used for each activity, the individuals engaged in each activity, the date or dates during which each activity occurred, the costs for each activity, and the portions of the Property where each activity occurred.

Interrogatory No. 3.

Please identify all documents, including, but not limited to, all contracts, communications, surveys, drawings, maps, invoices, and receipts relating to residential, commercial, and recreational development of the Property.

Interrogatory No. 4.

Please identify all documents, including, but not limited to, all contracts, communications, surveys, drawings, maps, invoices, and receipts relating to the development of Stennis Technology Park.

Interrogatory No. 5.

If your response to Request for Admission No. 3 is anything other than an unqualified admission, please specify the factual basis for your response.

REQUESTS FOR PRODUCTION

Request for Production No. 1.

Please produce all documents relating to Interrogatory Nos. 1 - 5.

Request for Production No. 2.

Please produce all financial documents for or relating to HCD, dating from 2003 through the present, including, but not limited to, those documents that include, show, or summarize annual income, annual expenses, annual financial reports, balance sheets, and federal and state tax returns.

Respectfully submitted on April 17, 2009,



Elizabeth Livingston de Calderón, La Bar #: 31443
Tulane Environmental Law Clinic
6329 Freret Street
New Orleans, Louisiana 70118
Telephone: (504) 865-5789; Fax: (504) 862-8721
Direct Line: (504) 862-8819
Counsel for Plaintiff Gulf Restoration Network

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing request has been served upon the following counsel of record by electronic means and by U.S. mail on April 17, 2009:

Christopher M. Carron
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931
(228) 214-0432
Fax: (866) 830-1510
ccarron@balch.com
tlogan@balch.com

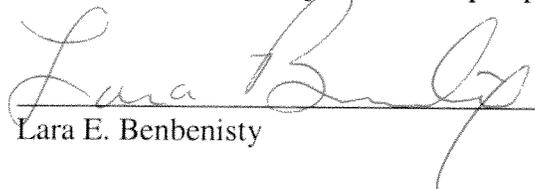
Roderick Mark Alexander, Jr.
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931
(228) 214-0417
Fax: (228) 864-8221
malexander@balch.com

Harry Rosenberg
harry.rosenberg@phelps.com
Phelps Dunbar, LLP
365 Canal Street, Suite 2000
New Orleans, LA 70130-6534
(504) 584-9249
Fax: (504) 568-9130
campelg@phelps.com
rosenbeh@phelps.com

Terese T. Wyly
Balch & Bingham, LLP
1310 Twenty-Fifth Avenue
Gulfport, MS 39501-1931
(228) 214-0413
Fax: (228) 864-8221
twyly@balch.com

Robert B. Wiygul
Waltzer & Associates
1025 Division Street, Suite C
Biloxi, MS 39530
(228) 374-0700
Fax: (228) 374-0725
robert@waltzerlaw.com
maile@waltzerlaw.com

William Crosby Parker
Phelps Dunbar, LLP
NorthCourt One, Suite 300
2304 19th Street
Gulfport, MS 39501
(228) 679-1130
Fax: (228) 679-1131
parkerc@phelps.com
jane.smith@phelps.com



Lara E. Benbenisty

DECLARATION OF CHRISSY SCHUENGEL

1. My name is Chrissy Schuengel. I am more than eighteen years old and am competent to make this declaration. This declaration is based on my personal knowledge.

2. I own and live at the property located at 7110 Bayou La Croix Road, Bay St. Louis, Mississippi 39520. I have been living there for more than 20 years.

3. My house and property are located less than a mile from Bayou Maron. I often drive past Bayou Maron because the road I live on, Bayou La Croix Road, crosses over Bayou Maron. I also visit Bayou Maron regularly for recreational purposes, including bird watching, site seeing, and boating with a canoe and small skiff.

4. I am currently a member of the Gulf Restoration Network. I have been a member since December of 2007.

5. I enjoy spending time in my backyard and around my house growing vegetables, raising chickens and dogs, planting flowers, and having family gatherings where children play behind the house in our backyard and on family property. I also enjoy watching deer, raccoons, birds, an occasional hog, and other wild animals on and near the back of our property.

6. I am familiar with the construction and wetlands dredging and filling activities taking place on property owned by Hancock County Development (“HCD”) located in and near Bay St. Louis in Hancock County, Mississippi (the “Property”).

7. I am also familiar with the Property, which is located just north of my home, less than 200 yards from my own property line. There are no structures or improvements between my property and the Property. I can see from my dining room and back porch a berm on the

Property that runs the length of my property and beyond. The location of my home is marked with a red circle on the attached photograph at Appendix 1, which I took from an airplane on June 10, 2008. Appendix 1 is also marked with **a)** a red line showing, approximately, a portion of the Property's southern boundary, **b)** a red rectangle showing the location of the Bayou LaCroix Road bridge that marks the end of the Bayou Maron tributary and the beginning of Bayou Maron, and **c)** labels showing portions of Bayou Maron, Bayou La Croix, the Jourdan River, St. Louis Bay, and Bayou La Croix Road. The Bayou Maron tributary runs from the bridge towards the left corner of the photograph, which shows water from the branch gathered at the end of a dredged and refilled canal on the Property. A second canal was dredged after the first was filled, which is visible in the far left bottom corner of the photograph. I am familiar with the Property, as well as with my home, Bayou Maron, the Bayou Maron tributary, Bayou La Croix, Bayou La Croix Road, and the Bayou LaCroix Road bridge. The photograph at Appendix 1 is a fair and accurate representation of a portion of the Property, of my home, and of portions of Bayou Maron, Bayou La Croix, the Bayou Maron tributary, and Bayou La Croix Road and bridge on a typical day.

8. The properties between my own and the Property belong to my family. My family and I have used the properties for grazing animals and for recreation, among other things. Also, I have used the property immediately north and east of my own, to which I am an heir, to grow a large garden.

9. The Property's western border runs along a tributary to Bayou Maron, which I have always called the Bayou Maron Branch. The Bayou Maron tributary runs through my father's property and connects with the Property. The Bayou Maron tributary has run through my father's property for as long as I can remember, but after recent construction on the Property, so

much water flows through it that it appears indistinguishable from Bayou Maron. I have attached a photograph that Kevin Schuengel took in September of 2008 showing Lawrence Lang walking at the edge of the Bayou Maron tributary as it has appeared since construction began on the Property as Appendix 2. I am familiar with the area, and the photograph is a fair and accurate description of the Bayou Maron tributary on a typical day.

10. Some of the canals that HCD constructed on the Property connect directly to the Bayou Maron tributary. Even before construction began on the Property, it was difficult to see where the waters of the Bayou Maron and its tributary stopped and the wetlands of the Property began. Now, with the connection of the canals to the Bayou Maron tributary, their waters have become indistinguishable. Appendix 1 shows the Bayou Maron tributary and demonstrates how it is hard to distinguish it from the surrounding wetlands. I have attached a photograph that Kevin Schuengel took in September of 2008 that shows where the Bayou Maron tributary connects to a canal on the Property as Appendix 3. The photograph looks to the north and shows trucks driving past on Interstate 10, where the Bayou Maron tributary passes under the interstate. It shows the connection of the Bayou Maron tributary, the left most water body that runs from top to bottom of the photograph, to a recently constructed canal on the Property at the center foreground stretching to the right. Tall grasses obscure a portion of the canal on the right side of the photograph. I am familiar with the connection of the Bayou Maron tributary to the Property and with Interstate 10, and the photograph is a fair and accurate representation of the area.

11. The increase of water flow from the Property has caused the Bayou Maron tributary to widen and deepen, so that I can no longer cross it on foot without knee waders on a typical day. After a rainfall, I can no longer cross the tributary on foot, even in hip waders. The increase in water has also widened Bayou Maron. Moreover, the construction work on the Property has

caused and allowed dredged material and silt to enter Bayou Maron through the Bayou Maron tributary. In the past, before construction began on the Property, the waters of Bayou Maron and the Bayou Maron tributary were generally dark colored and clear. As a result of the dredging and filling on the Property, their waters are often lighter colored and full of silt and dredged material. I have attached a photograph at Appendix 4 that I took on April 4, 2008 that shows a mound, canal, and roads from the construction activities as well as silt fencing that was installed after the October 2007 cease work order. The photograph also shows silt and dredged material as it runs over that fencing, appearing at the right half of the fence breach as a lighter, milky beige color in the water. I have also attached at Appendix 5 a photograph that I took on April 4, 2008 that shows water flowing from the Property into the Bayou Maron tributary. The milky, light beige colored water in the photograph shows the silt and dredged material as it flows toward Bayou Maron. The darker colored water includes less silt. I am familiar with the Property and the area where the Property connects with the Bayou Maron tributary and the photographs at Appendices 4 and 5 are fair and accurate representations of those areas at the time the photographs were taken. I have also attached a photograph at Appendix 6 that I took on April 4, 2008 that shows where the Bayou Maron tributary becomes Bayou Maron as it flows under the Bayou LaCroix Road bridge. The photograph shows silt and sediment flowing in the water and also shows the contrast between the light silt and sediment laden water with the darker, clearer water that was prevalent before construction began on the Property. The photograph at Appendix 6, taken from the bridge on Bayou LaCroix Road, also shows Bayou Maron overflowing its banks and widening past the base of the bridge. I am familiar with Bayou Maron, the Bayou Maron tributary, and the Bayou LaCroix Road bridge. This photograph is a

fair and accurate representation of Bayou Maron at end of the Bayou Maron tributary and the bridge over it at the time the photograph was taken.

12. The wetlands of the Property neighbor, border, lie adjacent to, and have a continuous surface connection with Bayou Maron, its tributary, Bayou LaCroix, the Jourdan River, and St. Louis Bay. The Property itself borders the Bayou Maron tributary. I took photographs showing their proximity from an airplane on June 10, 2008, which are attached at Appendices 1 and 7. The photograph at Appendix 7 shows, among other things, the connection of Bayou Maron to Bayou La Croix (at the top of the photograph to the center). It also shows Bayou Maron as it approaches the Property. I am familiar with the Property, Bayou LaCroix, and Bayou Maron. The photographs at Appendices 1 and 7 are fair and accurate representations of my home and of a portion of the Property, Bayou Maron, and Bayou La Croix, on a typical day.

13. Bayou Maron and Bayou La Croix are navigable waterways that drain into the Jourdan River and St. Louis Bay. I know this because I have lived in the area since I was a child and have taken boats into Bayou Maron and Bayou La Croix many times. Also, Appendix 1 shows where Bayou LaCroix connects with the Jourdan River and then St. Louis Bay.

14. In mid-May of 2007, I observed recently built ditches, berms, mounds, dams, canals and roads on the Property. Before May of 2007, I saw the Property daily from my own home and regularly from my families' properties, and there were no berms, mounds, dams, or canals. I did know of an old access road on the Property, but even that appeared to be expanded after May of 2007. I had heard some truck and construction noises in the weeks before May of 2007. I took photographs on September 13, 2007 showing some of these new constructions, which are attached at Appendices 8 and 9 and are fair and accurate representations of the Property at the time I took the photographs. I took additional photographs showing some of these constructions

from an airplane on June 10, 2008, which are attached at Appendices 1, 7, 10 and 11 and are a fair and accurate representations of the Property at the time I took the photographs. The photograph at Appendix 10 looks to the northeast and shows a canal and roads that run along the northern property line of the Property, parallel to Interstate 10, as well as other canals, berms, and roads that snake through the Property. The photograph at Appendix 11 looks west-northwest and shows a large, filled clearing in the Property that is connected to canals and roads through the Property, including those running parallel to Interstate 10 on the northern border (in the upper right quadrant of the photograph). Highway 603 is visible at the bottom of the photograph running at an angle.

15. On October 1, 2007, I spoke with Joshua Ladner, and he identified himself as the person in charge of the construction work on the Property.

16. On October 1, 2007, immediately before I spoke with Joshua Ladner, I watched as he operated heavy machinery pushing fill on the Property. I also watched as he initiated a call on his mobile phone. Within a few minutes of his call, a vehicle arrived, approaching from a dirt road on the Property. Two men exited the vehicle to speak with us. One man I recognized as Rusty Miller, whom I knew to be a project manager for the development on the Property. The other man identified himself as Eric Wooten and said he was the attorney for Hancock County Land (a.k.a. Hancock County Development). As they stood on the Property, we discussed, among other things, the berm they were constructing in that spot, ditches that they had dug nearby and were now filling, and the effect of these and other constructions on flooding and storm water flow.

17. On many occasions, I have observed that Joshua Ladner and his employees use bulldozers and backhoes and other excavating and land-clearing equipment in wetland areas of

the Property. I took photographs demonstrating use of excavation and land clearing equipment on September 13, 2007, attached at Appendix 12, and on October 1, 2007, attached at Appendix 13. The photographs at Appendices 12 and 13 are fair and accurate representations of the Property at the time I took the photographs.

18. The canals and ditches and the fill that comprises the dams, berms, mounds, and roads on the Property remain in the wetlands, as demonstrated by the photographs taken on June 10, 2008 at Appendices 1, 7, 10, and 11.

19. The berms, mounds, dams, and roads discharge pollutants into the wetlands of the Property and into the Bayou Maron tributary, particularly when it rains. The photographs at Appendices 4 and 5 show this discharge.

20. Before May 2007, my property did not normally flood, even during moderate tropical episodes. For example, I experienced no flooding on my property when Hurricane George passed over Bay St. Louis in 1998. I have attached at Appendix 14 a photograph of my property that I took immediately after Hurricane George. The photograph at Appendix 14 is a fair and accurate representation of my property at the time I took the photograph.

21. After HCD began filling in wetlands on the Property, my property started to flood during mild rains. The flooding to my property has increased as the construction and filling of wetlands on the Property has continued. The water that has been flooding my property since HCD began construction activities on the Property often comes as a solid flow of water from the Property. The flood waters have washed soil and plants off my property, flooded the dog houses, and inundated my chicken coop and shed. This flooding has occurred many times. I have attached a photograph at Appendix 15 that shows one such event of flooding following a light to

medium rain in October 2007. It is a fair and accurate representation of my home property and chicken coop at the time I took the photograph and after rainfalls.

22. Since construction and filling of wetlands began on the Property, I have observed standing water abutting the northern edge of my property. I used to maintain the property abutting the northern edge of my property by mowing its grasses, but can no longer do that because it is constantly wet. I have attached a photograph at Appendix 16 that I took in April of 2008 that shows the area abutting the northern edge of my property. The photograph at Appendix 16 is a fair and accurate representation of the area on a typical day. The standing water is so deep in places that I need waders that reach above my knees to access the area. In the past, I planted a garden there. I enjoyed planting a garden in that area and would continue to garden in that area but cannot now because of the flooding. I now keep a smaller vegetable garden on my own property in a box raised above ground level. I enjoyed a larger, in-ground garden and would continue to plant a larger, in-ground garden but cannot now because flooding and a higher water table since the construction activities hurt my in-ground plants. Also, in the past, I allowed animals to roam and graze behind the northern edge of my property, including cows, goats, pigs, and dogs. I have attached a photograph at Appendix 17 that shows the area at and behind the northern edge of my property before the construction activities on the Property. The photograph also shows my cow, partially hidden by the oak tree, grazing behind the northern edge of my property. The photograph at Appendix 17 is a fair and accurate representation of the northern boundary of my property and the cows at the time I took the photograph and of the northern boundary of my property up until the time when construction activities began on the Property. I enjoyed allowing animals to roam and graze behind the northern edge of my property and would continue to do so but cannot because of the flooding. The standing water and

flooding has resulted in, among other things, an increase in the number of pests on my property, including mosquitoes, rats, alligators, and poisonous snakes.

23. I am concerned that my property and my family's property will endure long term damage from the flooding that resulted from HCD building berms, mounds, dams, ditches, canals, and roads on the Property. Additionally, I am concerned that the increased presence of water moccasin snakes, alligators, mosquitoes and rats makes these properties less safe. I used to allow children to play in the area at the northern edge of my property. I enjoyed watching them play and would continue to do so, but do not because I no longer feel it is safe because of the flooding and its repercussions.

24. My concerns about the harm to my property and my family's properties and about safety risks impair my enjoyment of these properties. Also, the actual presence of flood waters and pests impair my ability to recreate in and around my yard and reduce my enjoyment of my home. Moreover, I am worried that this presence of flood waters and pests and the related safety hazards reduces the value of my home.

25. In the past, I enjoyed looking at the view from my dining room and back porch. I no longer enjoy that view as much as I did before construction on the Property because I see a berm on the Property that runs the length of my property, detracting from the beauty of the view. I also enjoy the view less because I know that the berm is unnatural and caused by artificial and unlawful activities.

26. Since construction and filling of wetlands began on the Property, Bayou Maron has widened from the increased water flow into it from the Property.

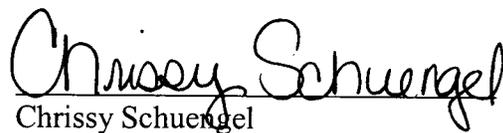
27. I visit and recreate at Bayou Maron and the Bayou Maron tributary regularly. My use and enjoyment of Bayou Maron and the Bayou Maron tributary has been impaired by the

increased water flow and sediment pollution caused by the clearing, dredging and filling of wetlands on the Property. For example, I do not enjoy seeing either Bayou Maron or its tributary as much as I did before the construction on the Property because of the sediment that comes from the Property that mars the appearance and shape of them, making them uglier and less healthy looking streams. Also, seeing both Bayou Maron and its tributary widened and/or deepened saddens me because I know it is unnatural and caused by artificial and unlawful activities. I no longer enjoy their beauty in the same way that I did before the construction on the Property.

28. I live on and use Bayou La Croix Road regularly. Before the construction on the Property, Bayou La Croix Road did not flood during rain falls. Since the construction activities on the Properties began, Bayou La Croix Road floods from its northern side when it rains. I have attached as Appendix 18 a photograph that I took of an example of this flooding of Bayou LaCroix Road. I am familiar with Bayou LaCroix Road, and this photograph is a fair and accurate representation of Bayou La Croix Road at the time it was taken. My use and enjoyment of Bayou La Croix Road has been impaired by the flooding on the road caused by the clearing, dredging and filling of wetlands on the Property because I feel less safe driving on wet roads with puddles than on dry roads.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 16, 2010.


Chrissy Schuengel



St. Louis Bay

Jourdan River

Bayou La Croix

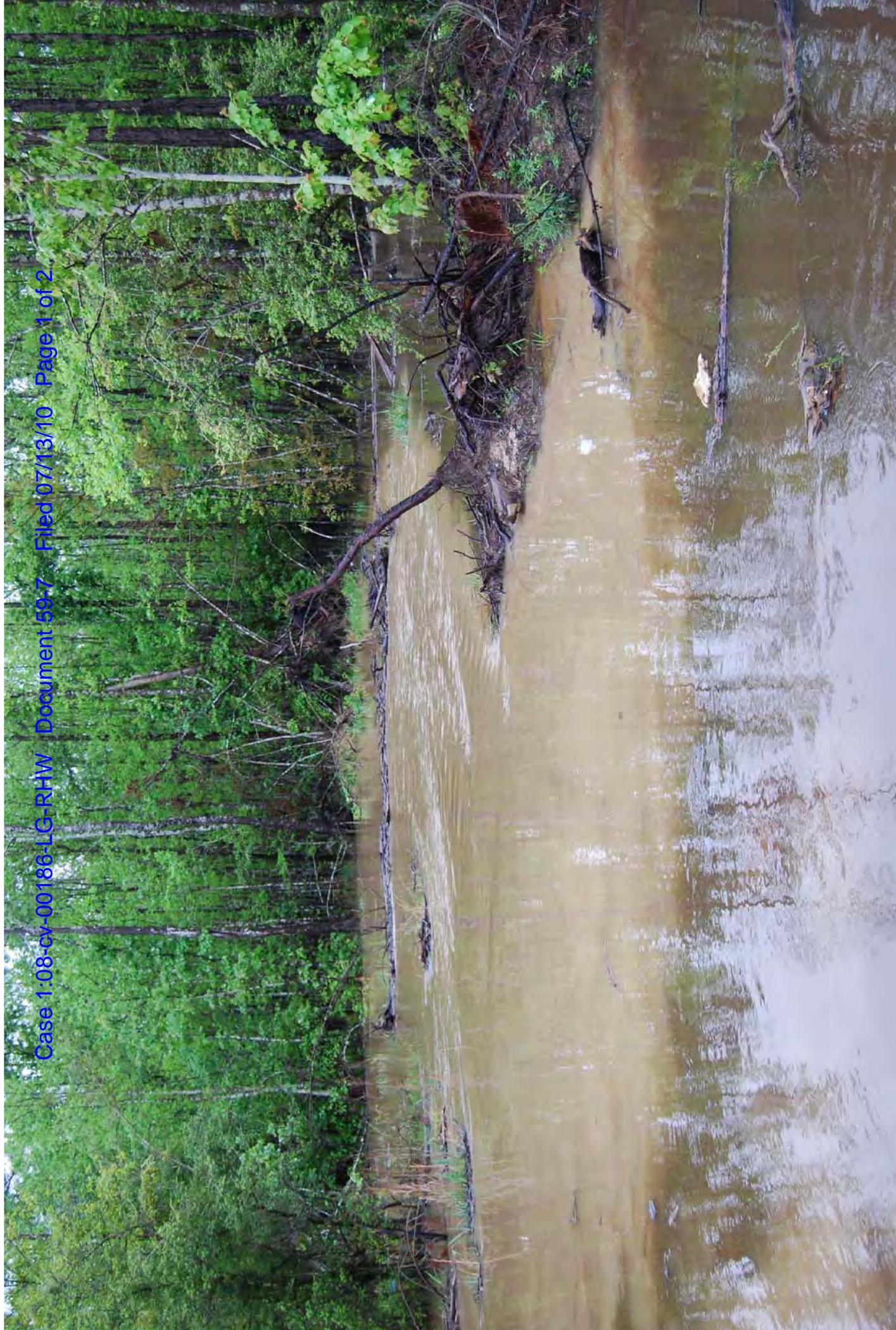
Bayou La Croix Road

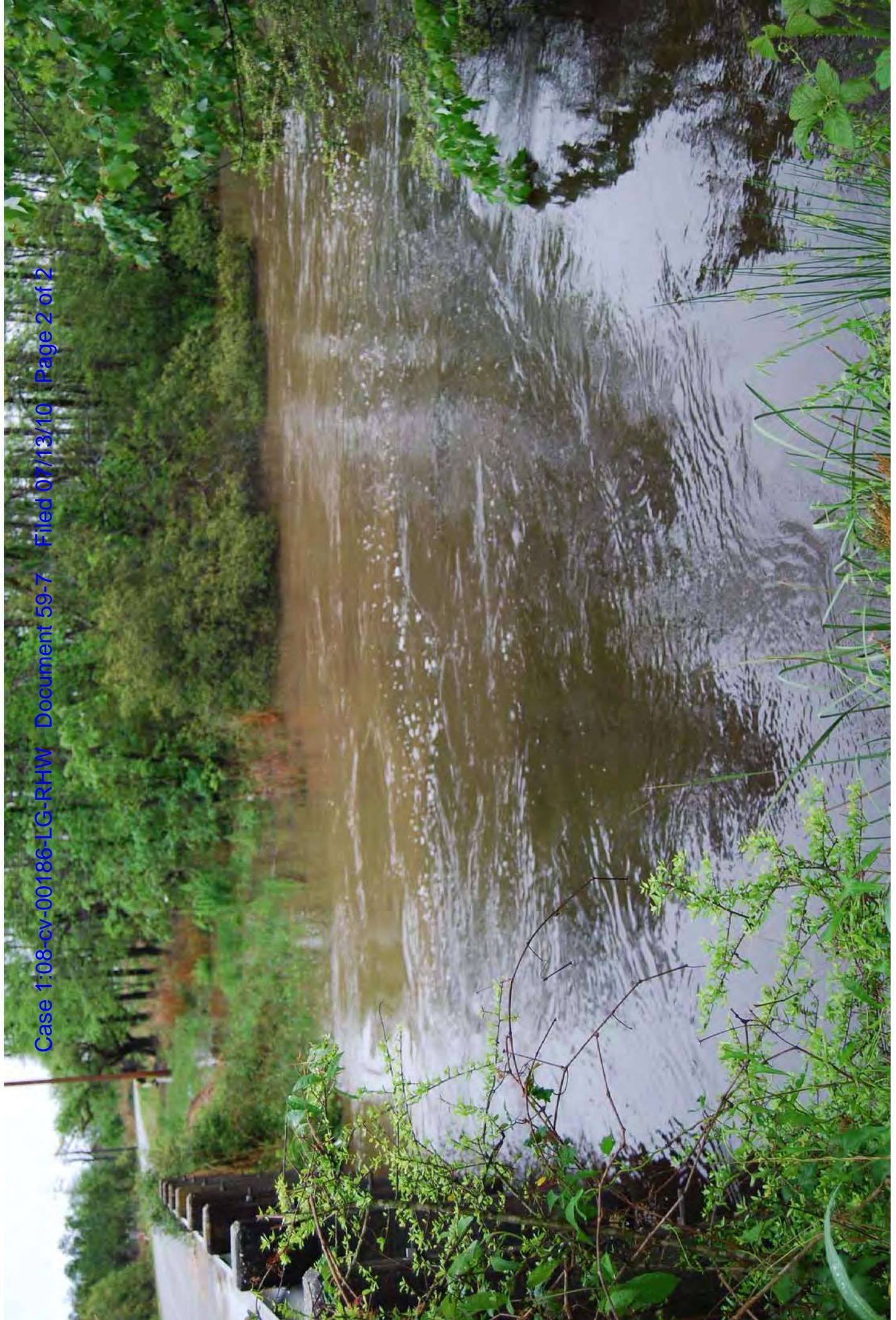
Bayou Maron

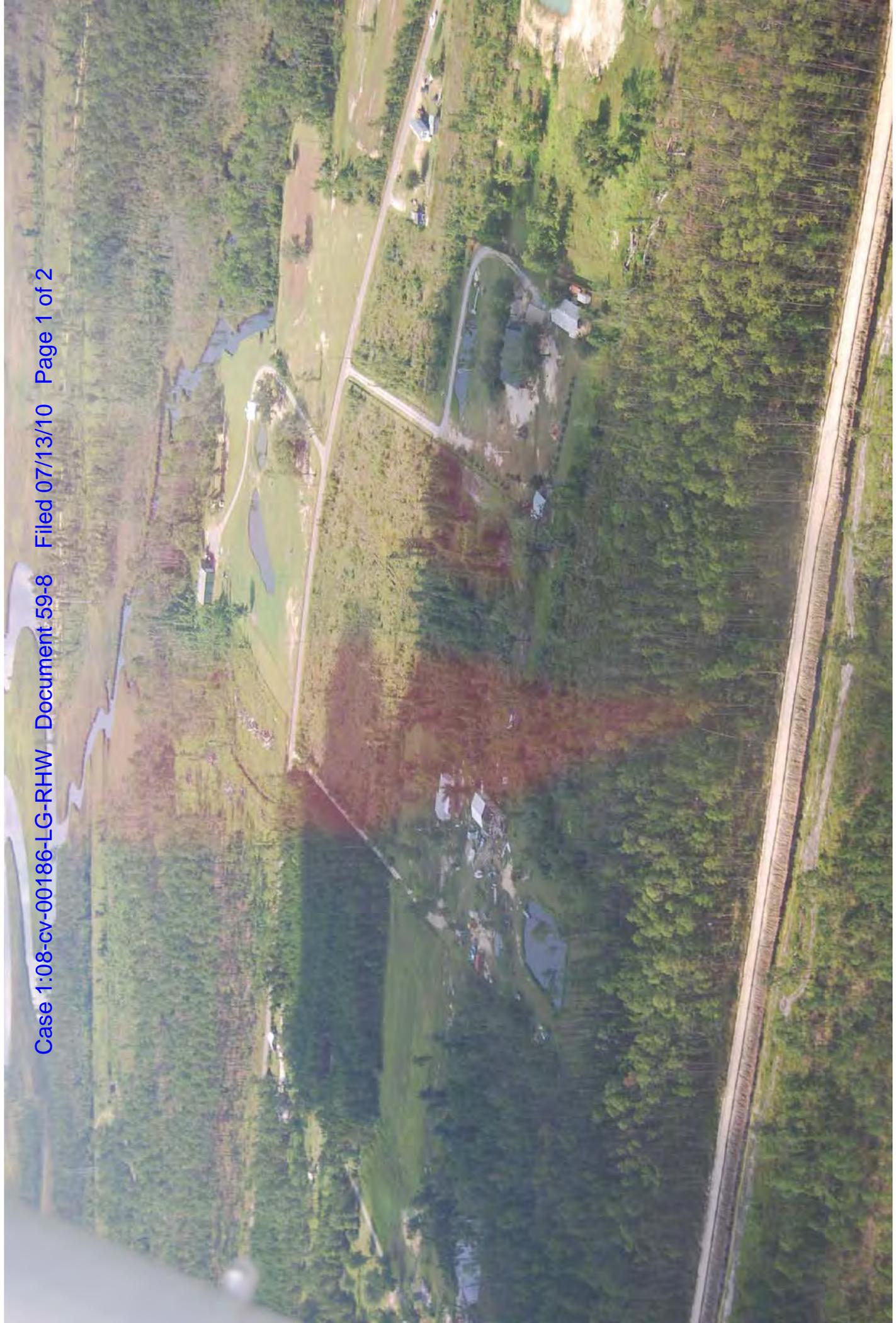
































3/9/99

Tiffany!



DECLARATION OF LAWRENCE LANG

1. My name is Lawrence Lang. I am more than eighteen years old and am competent to make this declaration. This declaration is based on my personal knowledge.

2. I own and live at the property located at 7136 Bayou La Croix Road, Bay St. Louis, Mississippi 39520. I have been living there for over 60 years.

3. I am familiar with the construction and wetland dredging and filling activities taking place on property owned by Hancock County Development (“HCD”) located near Bay St. Louis in Hancock County, MS (the “Property”). I am also familiar with the Property, which is located just north of my home and borders on my property. I have a clear view of the Property because there are no structures between my property and the Property. I have attached at Appendix 1 an aerial photograph taken by Chrissy Schuengel on June 10, 2008 that shows a portion of my property where it meets the Property. The red line marks the approximate location of the property line that I share with the Property. The photograph at Appendix 1 is a fair and accurate representation of my property and the Property at the time it was taken.

4. I am currently a member of the Gulf Restoration Network. I have been a member since 2008.

5. I am familiar with Bayou Maron. I am also familiar with Bayou Maron’s tributary, which is a branch that runs through my property from the north until the bridge at Bayou La Croix Road. Immediately before reaching my property, the waters of the Bayou Maron tributary stream along the Property’s western boundary line. The tributary reaches the Property after traveling under Interstate 10 through a concrete tunnel.

6. Some of the canals that Hancock County Development constructed on the Property connect directly to the Bayou Maron tributary. Even before construction began on the Property, it was difficult to see where the waters of the Bayou Maron tributary stopped and the wetlands of the Property began. Now, especially with the connection of the canals to the Bayou Maron tributary, their waters have become indistinguishable.

7. I have noticed that Bayou Maron and its tributary receive more water than before construction began on the Property. This increase of water flow from the Property has caused the Bayou Maron tributary to widen and deepen, so that I can no longer cross it on foot without knee waders on a typical day. After a rainfall, I can no longer cross the tributary on foot, even in hip waders. The increase in water has also widened Bayou Maron. Moreover, the construction work on the Property has caused and allowed dredged material and silt to enter Bayou Maron through the Bayou Maron tributary. In the past, before construction began on the Property, the waters of Bayou Maron and the Bayou Maron tributary were generally dark colored and clear. Since HCD's construction began, their waters are often lighter colored and full of silt and sediment.

8. The wetlands of the Property neighbor, border, lie adjacent to, and have a continuous surface connection with Bayou Maron, its tributary, Bayou LaCroix, the Jourdan River, and St. Louis Bay. The Property itself borders the Bayou Maron tributary.

9. Bayou Maron and Bayou La Croix are navigable waterways that drain into St. Louis Bay. I know this because I have taken boats into Bayou Maron and Bayou La Croix many times. Also, the photograph at Appendix 1 shows where Bayou LaCroix flows, from the top right, into the Jourdan River and then into St. Louis Bay. The photograph at Appendix 1 is a fair and accurate representation of the connecting portions of Bayou LaCroix, the Jourdan River, and St. Louis Bay on a typical day.

10. On May 7, 2007, I observed that ditches, berms, dams, canals and roads had been constructed on the Property. Some of those constructions are visible from my own property. Before May of 2007, I saw the Property daily from my own home and property, and I had not seen any berms, mounds, dams, or canals. An old access road runs through my property and onto the Property, and trucks and cars were using it frequently immediately before I saw the new constructions. I had heard some truck and construction noises in the weeks before May of 2007.

11. After that time, I spoke with equipment operators performing the work on the Property. They informed me that the project included, among other things, placing a ditch/canal running east to west and tying into Bayou Maron.

12. One of the first constructions I noticed in May 2007 was a canal on the Property running along my northern property line. Shortly after, I spoke with each Joshua Ladner, who identified himself as the contractor, and Rusty Miller, who identified himself as the project manager for development of the Property, about the potential for the canal to flood my property. They explained that they were planning to drain the area from the east into the Bayou Maron tributary. When they later cut the bulkhead at the old access road, the water connected with the Bayou Maron tributary and flowed back onto the Property. It also flooded my property. In June 2007, after I complained, workers filled in that same canal and re-routed it. The filled in canal is visible in the photograph at Appendix 1, beginning about a quarter of the way down the red line marking the shared property line, on the left side. The same photograph shows the re-routed canal leading further north before turning west again toward the Bayou Maron tributary.

13. On October 1, 2007, I watched as Joshua Ladner operated heavy machinery pushing fill on the Property. I also watched as he initiated a call on his mobile phone. Within a few minutes of his call, a vehicle arrived, approaching from a dirt road on the Property. Two men exited the

vehicle to speak with us. One man I recognized as Rusty Miller. The other man identified himself as Eric Wooten and said he was the attorney for Hancock County Land (a.k.a. Hancock County Development). As they stood on the Property, we discussed, among other things, the berm they were constructing in that spot, ditches that they had dug nearby and were now filling, which Rusty Miller described as "borrow pits," and the effect of these constructions on flooding and storm water flow.

14. On many occasions, I have observed that Joshua Ladner and his employees use bulldozers and backhoes and other excavating and land-clearing equipment in wetland areas of the Property.

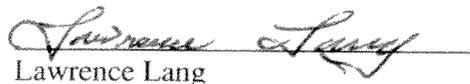
15. The canals and ditches and the fill that comprises the dams, berms, mounds, and roads on the Property remain on the Property.

16. The berms, mounds, dams, and roads discharge pollutants into the wetlands of the Property and into the Bayou Maron tributary, particularly when it rains.

17. Since the construction of dams, berms, ditches, canals, mounds, and roads on the Property, I have experienced flooding on my property from amounts of rainfall that did not flood my property before those constructions were present.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2010.


Lawrence Lang



DECLARATION OF KEVIN SCHUENGEL

1. My name is Kevin Schuengel. I am more than eighteen years old and am competent to make this declaration. This declaration is based on my personal knowledge.
2. I own and live at the property located at 7110 Bayou La Croix Road, Bay St. Louis, Mississippi 39520. I have been living there for more than 20 years.
3. My house and property are located less than a mile from Bayou Maron. I often drive past Bayou Maron because the road I live on, Bayou La Croix Road, crosses over Bayou Maron. I also visit Bayou Maron regularly for recreational purposes, including bird watching, site seeing, and boating with a canoe and small skiff.
4. I am currently a member of the Gulf Restoration Network. I have been a member since 2007.
5. I enjoy spending time in my backyard and around my house growing vegetables, raising chickens and dogs, planting flowers, and having family gatherings where children play behind the house in our backyard and on family property. I also enjoy watching deer, raccoons, birds, an occasional hog, and other wild animals on and near the back of our property.
6. I am familiar with the construction and wetlands dredging and filling activities taking place on property owned by Hancock County Development (“HCD”) located in and near Bay St. Louis in Hancock County, Mississippi (the “Property”).

7. I am also familiar with the Property, which is located just north of my home. Its property line is less than 200 yards from my own property line. There are no structures or improvements between my property and the Property. I can see from my dining room and back porch a berm on the Property that runs the length of my property and beyond.

8. The properties between my own and the Property belong to my wife's family. Her family has used the properties as a place for animals to graze and for recreation, among other things. Also, my wife used the property immediately north of my own, to which she is an heir, to grow a large garden.

9. Before May 2007, my property did not normally flood, even during moderate tropical episodes. For example, I experienced no flooding on my property when Hurricane George passed over Bay St. Louis in 1998.

10. After HCD began filling in wetlands on the Property, my property started to flood during mild rains. The flooding to my property has increased as the construction and filling of wetlands on the Property has continued. The water that has been flooding my property since HCD began construction activities on the Property often comes as a solid flow of water from the Property. The flood waters have washed soil and plants off my property, flooded the dog houses, and inundated my chicken coop and shed. This flooding has occurred many times.

11. Since construction and filling of wetlands began on the Property, I have observed standing water abutting the northern edge of my property. I used to maintain the property abutting the northern edge of my property by mowing its grasses, but can no longer do that because it is constantly wet. In the past, I allowed animals to roam and graze behind the northern edge of my property, including cows, goats, pigs, and dogs. I enjoyed allowing animals to roam and graze behind the northern edge of my property and would continue to do so but cannot

because of the flooding. The standing water and flooding has resulted in, among other things, an increase in the number of pests on my property, including mosquitoes, rats, alligators, and poisonous snakes.

12. I am concerned that my property and my family's property will endure long term damage from the flooding that resulted from HCD building berms, mounds, dams, ditches, canals, and roads on the Property. Additionally, I am concerned that the increased presence of water moccasin snakes, alligators, mosquitoes and rats makes these properties less safe. I used to allow children to play in the area at the northern edge of my property. I enjoyed watching them play and would continue to do so, but do not because I no longer feel it is safe because of the flooding and its repercussions.

13. My concerns about the harm to my property and my wife's family's properties and about safety risks impair my enjoyment of these properties. Also, the actual presence of flood waters and pests impair my ability to recreate in and around my yard and reduce my enjoyment of my home. Moreover, I am worried that this presence of flood waters and pests and the related safety hazards reduces the value of my home.

14. In the past, I enjoyed looking at the view from my dining room and back porch. I no longer enjoy that view as much as I did before construction on the Property because I see a berm on the Property that runs the length of my property, detracting from the beauty of the view. I also enjoy the view less because I know that the berm is unnatural and caused by artificial and unlawful activities.

15. Since construction and filling of wetlands began on the Property, Bayou Maron has widened from the increased water flow into it from the Property.

16. I visit and recreate at Bayou Maron and the Bayou Maron tributary regularly. My use and enjoyment of Bayou Maron and the Bayou Maron tributary has been impaired by the increased water flow and sediment pollution caused by the clearing, dredging and filling of wetlands on the Property. For example, I do not enjoy seeing either Bayou Maron or its tributary as much as I did before the construction on the Property because of the sediment that comes from the Property that mars the appearance of them, making them uglier and less healthy looking streams. Also, seeing both Bayou Maron and its tributary widened and/or deepened saddens me because I know it is unnatural and caused by artificial and unlawful activities. I no longer enjoy their beauty in the same way that I did before the construction on the Property.

17. I live on and use Bayou La Croix Road regularly. Before the construction on the Property, Bayou La Croix Road did not flood during rain falls. Since the construction activities on the Properties began, Bayou La Croix Road floods from its northern side when it rains. My use and enjoyment of Bayou La Croix Road has been impaired by the flooding on the road caused by the clearing, dredging and filling of wetlands on the Property because I feel less safe driving on wet roads with puddles than on dry roads.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 21, 2010.

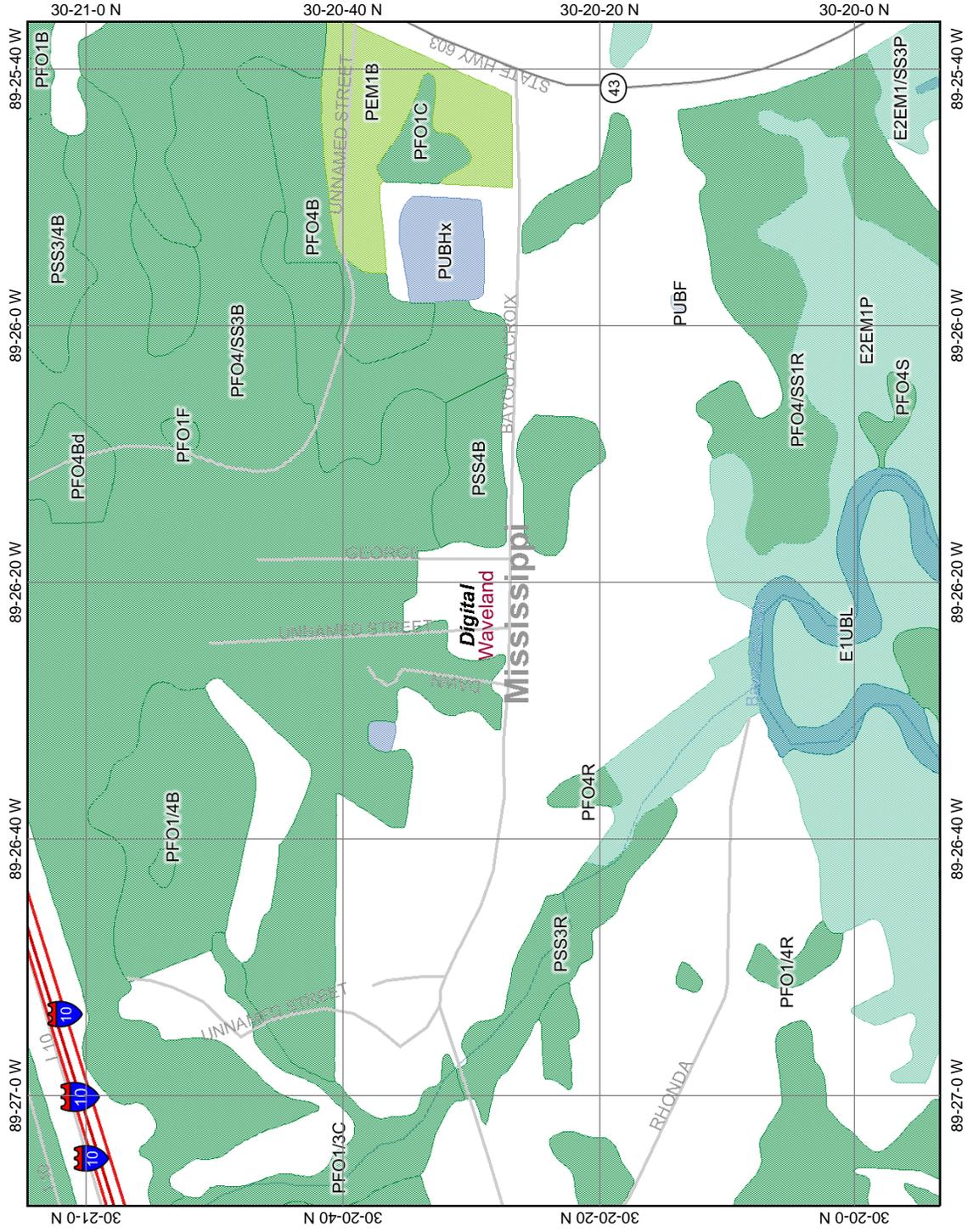


Kevin Schuengel



Ohio_wet_scan

- 0
- 1
- Out of range
- Interstate
- Major Roads
- Other Road
- Interstate
- State highway
- US highway
- Roads
- Cities
- USGS Quad Index 24K
- Lower 48 Wetland Polygons
- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine
- Lower 48 Available Wetland Data
- Non-Digital
- Digital
- No Data
- Scan
- NHD Streams
- Counties 100K
- States 100K
- South America
- North America

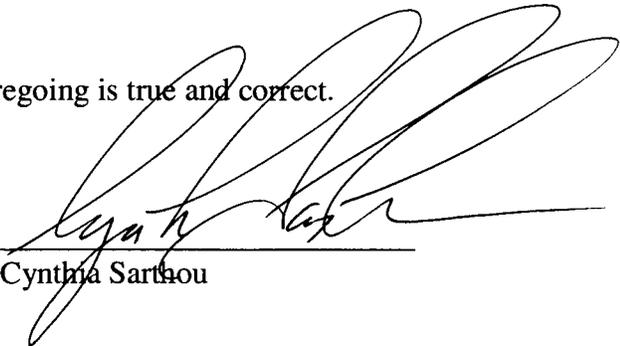


DECLARATION OF CYNTHIA SARTHOU

1. My name is Cynthia Sarthou. I am more than eighteen (18) years old and competent to make this declaration. All matters in this declaration are based on my personal knowledge.
2. The Gulf Restoration Network ("GRN") formed in 1995. I am the executive director of GRN. I am familiar with GRN's policies, organizational structure, and practices.
3. GRN is a non-profit corporation organized under the laws of the State of Louisiana.
4. GRN is a network of environmental, social justice, and citizens' groups and individuals committed to restoring the Gulf of Mexico to an ecologically and biologically sustainable condition.
5. GRN's members live in the five Gulf states of Texas, Louisiana, Mississippi, Alabama and Florida, and nationwide, and include residents of Hancock County who live and own property adjacent to the dredge and fill site.
6. GRN's mission is to protect and restore the resources of the Gulf Region for future generations.
7. The ecological, biological, aesthetic, and other interests that GRN seeks to protect with this lawsuit are directly related to GRN's purpose of protecting and restoring the resources of the Gulf Region.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2010.


Cynthia Sarthou