

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

GULF RESTORATION NETWORK

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:08-CV-00186-LG-RWH

**HANCOCK COUNTY
DEVELOPMENT, LLC**

DEFENDANTS

CONSENT JUDGMENT

WHEREAS Defendant Hancock County Development, LLC, currently known as Hancock County Land, LLC, (“Hancock”) is a for-profit limited liability company incorporated in the State of Alabama and registered in the State of Mississippi, owning property in and near Bay St. Louis, Mississippi;

WHEREAS Hancock warrants that, subject to mineral interests and certain easements, it is the sole title holder of 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 (“the Property”);

WHEREAS, Hancock warrants that, aside from any ownership interest in Hancock, none of its affiliates, owners, managers, or employees owns an interest in the Property or the mineral rights therein;

WHEREAS, Hancock warrants that it has not transferred any interest in the Dedication Parcel during the six (6) months preceding its signing of this Consent Judgment;

WHEREAS Plaintiff Gulf Restoration Network is a non-profit organization composed of environmental, social justice, and citizen’s groups and individuals committed to restoring the Gulf of Mexico to an ecologically and biologically sustainable condition;

WHEREAS on February 22, 2011, the Court entered an order granting Plaintiff's Motion for Partial Summary Judgment on the issues of standing and liability under Sections 402 and 404 of the Clean Water Act;

WHEREAS without admitting any factual or legal allegation, claim alleged, or defense asserted, or claim that could have been asserted or defense that could have been asserted, the Parties wish to resolve this lawsuit cooperatively, without further litigation, and request that the Court enter this Consent Judgment;

WHEREAS the Clean Water Act § 505(c), 33 U.S.C. § 1365(c) provides: "No consent judgment shall be entered in an action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator [of EPA]," and the Parties represent that they will promptly send a copy of the proposed judgment via certified mail to the Attorney General and the Administrator and will notify the Court when the 45-day waiting period has elapsed;

WHEREAS the Parties have agreed to take all such further acts and execute all such further documents, as may reasonably be required, to give effect to the terms of this Agreement;

WHEREAS the Parties both represent and warrant that they have received all approvals necessary to enter this Consent Judgment and have authorized the person signing the Consent Judgment on their behalf to commit them to all the terms and conditions herein. Each of the signatories to this Consent Judgment represents and warrants that he or she has full power and authority to bind and commit to this Consent Judgment the Party upon whose behalf he is executing this Agreement:

NOW THEREFORE, the Parties agree and the Court hereby ORDERS as follows:

Definitions

1. The term “Hancock” refers to Defendant Hancock County Development, L.L.C., also known as Hancock County Land, L.L.C.

2. The term “Gulf Restoration” refers to Plaintiff Gulf Restoration Network.

3. 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.

4. The term “Dedication Parcel” refers to the entirety of parcel no. 126-0-13-004.001, and the western portion of parcel no. 134-0-18-002.000, the eastern border of which begins at the halfway point on the Property’s southern boundary and runs due north to the current location of the road (but not including the road) that extends south from I-10, then follows the western side of the current location of that road (but not including the road) as it runs north northwest, then continues to the Property boundary at I-10. A map indicating the approximate borders of the Dedication Parcel is attached at Exhibit A and incorporated by reference.

5. The term “Land Trust” refers to the Land Trust for the Mississippi Coastal Plain, but in the event that the Land Trust for the Mississippi Coastal Plain does not accept the Dedication Parcel, the term “Land Trust” will refer to the Nature Conservancy of Mississippi. In the event that the Nature Conservancy of Mississippi does not accept the Dedication Parcel, then Gulf Restoration and Hancock shall have three months to agree to another land trust organization or other appropriate entity willing and able to accept the Dedication Parcel, to which entity the term “Land Trust” shall refer. Agreement as to an entity to serve as the “Land Trust” under these circumstances shall not be unreasonably withheld. If at the end of the three month period referred to above, there is no agreed-upon “Land Trust,” then this Consent Judgment shall

become null and void. In the event that circumstances, as described above, result in the term “Land Trust” referring to an entity other than to the Land Trust for the Mississippi Coastal Plain, the Parties may agree to any reasonable extensions of deadlines in the Consent Judgment, or, if the Parties cannot so agree, either party may move the Court for such extension(s).

Transfer and Restoration of the Dedication Parcel

6. Within 6 months from the date of the final entry of this Consent Judgment by the Court, and provided the funding set forth in paragraph 11 has occurred, Defendant Hancock shall convey all its interests in the Dedication Parcel to the Land Trust in perpetuity for the purpose of restoration and conservation. In the event that the funding set forth in paragraph 11 does not occur before or within the 6 months after final entry of this Consent Judgment, then the conveyance required under this paragraph shall take place no later than 30 days after such funding. Until the time of the conveyance of the Dedication Parcel under this paragraph 6, Hancock shall not transfer any interest in the Dedication Parcel and shall meet any obligations associated with the Dedication Parcel, including the payment of all appropriate taxes.

7. Within fifteen (15) days after the lodging of this Consent Judgment with the Court, Defendant Hancock shall establish two independent escrow accounts at Hancock Bank, unless the Parties jointly agree to a different bank, which agreement shall not be unreasonably withheld, as follows:

- a. A “Restoration Account” to hold funds (the “Restoration Funds”) in escrow for the benefit of the Land Trust solely for the purposes of:
 - i. restoration of the Dedication Parcel pursuant to Paragraphs 9 and 11, below;
 - ii. the administrative costs associated with the transfer and restoration of the Dedication Parcel, including, but not limited to:

- A. a title search suitable to obtain a title policy, and
 - B. a Phase I Environmental Site Assessment study conducted pursuant to the appropriate ASTM International standard as contemplated by 40 C.F.R. § 312.11;
- iii. costs of obtaining a Corps permit and any necessary state and local permits; and
 - iv. the fees for Gulf Restoration's and Hancock's experts for designing the Restoration Plan (not to exceed \$7,500 for each expert).
- b. A "Stewardship Account" to hold funds (the "Stewardship Funds") in escrow for the benefit of the Land Trust solely for the purposes of maintaining the restoration of the Dedication Parcel set forth herein and to administer the conservation of the Dedication Parcel, however the Land Trust may at its discretion add the Stewardship Funds to the Land Trust's stewardship endowment, which endowment shall be used, inter alia, to maintain such restoration and to administer the conservation of the Dedication Parcel. Hancock shall deposit \$40,000 into the Stewardship Account by the time of its conveyance of the Dedication Parcel as contemplated by Paragraph 6.

8. Upon the establishment of the Restoration Account, Hancock shall make an initial deposit of \$100,000 into the Restoration Account. Such initial funds in the Restoration Account shall be immediately available to the Land Trust to fund items 7.a.ii, iii, and iv.

9. Within forty-five (45) days of the lodging of this Consent Judgment with the Court (or as soon thereafter as practical if the Corps is unable to accommodate the timing contemplated by this paragraph), Gulf Restoration's environmental consultant and Hancock's

environmental consultant will meet jointly with the Land Trust and the U.S. Army Corps of Engineers (the "Corps") for the purpose of developing a detailed restoration plan for the Dedication Parcel. The restoration plan ("Restoration Plan") shall:

- a. include (i) restoring disturbed areas to natural grade, (ii) collecting and installing native pine savanna herbaceous plant species seeds, and (iii) acquiring, delivering in gallon pots if appropriate, and planting native tree seedlings or saplings as appropriate to restore the Dedication Parcel, insofar as these measures are deemed reasonable and necessary by the Corps in order to restore and to obtain a permit for the restoration of the Dedication Parcel. Without limiting the foregoing or any other provision in the Consent Judgment, the Restoration Plan shall also include, to the extent approved by the Corps, the following measures intended to (but not warranted to) protect the properties owned by Gulf Restoration's members Chrissie and Kevin Schuengel and Lawrence Lang south of the Dedication Parcel and north of Bayou LaCroix Road: (i) with respect to the areas of land depicted in Exhibit B hereto, including any area under the lines of that depiction (the "Exhibit B Area"): (A) filling the ditching that runs through the Exhibit B Area, provided, however, that these restoration efforts will not cause unreasonable harm to the existence or the functionality of any culverts in or bordering the Exhibit B Area that were in place prior to 2007 unless such harm can be practicably repaired or mitigated; (B) removing existing berm(s) and other fill in the Exhibit B Area; and (C) grading the Exhibit B Area to direct drainage patterns to the north and the west; and (ii) erosion control at the eastern borders of any

filled ditching in the Dedication Parcel consisting of a fabric cover, ground cover (e.g., rye grass) and the planting of appropriate vegetation (e.g., tree seedlings and/or saplings in gallon pots, if appropriate), and, to the extent that the ditching on the north side of the Dedication Parcel will not otherwise be filled and stabilized as part of the restoration, then such erosion control will also include the placement of an earthen plug(s) and rock pieces at the eastern border of the northern ditching.

- b. include any measures deemed reasonable and necessary by the Corps in order to restore and to obtain a permit for the restoration of the Dedication Parcel, and
- c. be suitable to make a reasonable estimate of the cost to implement the Restoration Plan.

The Parties anticipate that the restoration plan will require a permit from the Corps under Section 404 of the Clean Water Act, and that the Land Trust will be responsible for obtaining such permit and overseeing the restoration, as set forth below.

10. In the event of a dispute between the Parties concerning this Consent Judgment, including without limitation the Restoration Plan, either party may bring such dispute to the Court's attention and the Court will resolve the dispute without a jury. In the event of such dispute, each party shall bear its own attorneys' fees and cost, notwithstanding any legal provision to the contrary.

11. Within thirty (30) days (or as soon thereafter as practical if the Land Trust is unable to accommodate the timing contemplated by this paragraph) of the finalization of the Restoration Plan, the Land Trust, in consultation with Gulf Restoration's environmental

consultant and Hancock's environmental consultant, will develop an estimate of the cost for implementing the Restoration Plan. The estimate shall be based on and include at least three bids from any outside contractor(s) necessary for the implementation of each aspect of the Restoration Plan on which the Land Trust seeks a bid, unless the Parties otherwise agree, and may also include, at the Land Trust's discretion, a reasonable and customary administrative fee for the Land Trust's (or other overseeing entity, as designated by the Land Trust) oversight of the restoration. Any environmental consultant or his/her company that participated in the development of the Restoration Plan may also submit a bid on any aspect of the Restoration Plan in addition to the minimum three bids required in the previous sentence, and such consultant's or company's bid can be a basis for the cost estimate if it is neither the low bid nor the high bid and the Parties agree. Such agreement must be in writing and may occur either before or after bids are opened. In any event, all bids shall be sealed and opened simultaneously in the presence of the parties or their representatives/consultants. If the Land Trust, Gulf Restoration's environmental consultant, and Hancock's environmental consultant are unable to agree on an estimate, then:

- a. if the difference between the estimate based on the highest bid(s) and the estimate based on the lowest bid(s) is 20% or less, then the Final Restoration Cost Estimate shall be equal to the average of the two estimates;
- b. if the difference between the estimate based on the highest bid(s) and the estimate based on the lowest bid(s) is greater than 20%, and the Parties cannot otherwise agree, then the Parties may resolve any dispute in accordance with paragraph 10, above.

If the Land Trust, Gulf Restoration's environmental consultant, and Hancock's environmental consultant agree on a Final Restoration Cost Estimate, or if a Final Restoration Cost Estimate is determined pursuant to subparagraph (a) or (b) (the "Final Restoration Cost Estimate"), then within twenty-one (21) days after the finalization of the restoration cost estimate, Hancock shall deposit into the Restoration Account an amount such that, when combined with any funds remaining in the Restoration Account after the completion of items 7.a.ii, iii, and iv the balance in the Restoration Account equals the sum of 125% of the Final Restoration Cost Estimate. Once the Final Restoration Cost Estimate has been established, nothing in this provision shall limit the Land Trust's ability to choose what person or business implements the Restoration Plan under the Final Restoration Cost Estimate.

12. Except as provided by paragraph 8, above, no funds in the Restoration Account shall be made available to the Land Trust until final entry of this Consent Judgment by this Court. In the event that this Consent Judgment is not entered by the Court within one year of its submission to the Court, then any funds remaining in the Restoration Account shall be returned to HCL and this Consent Judgment shall be null and void.

13. The funds in the Restoration Account shall be used by the Land Trust to restore the Dedication Parcel pursuant to the Restoration Plan. Hancock's environmental consultant shall have the right to reasonable access to the Dedication Parcel to monitor the restoration with respect to whether Restoration Funds are being used consistent with and only to the extent reasonably necessary to implement the Restoration Plan. Hancock shall not be required to supplement the amount contained in the Restoration Account unless Hancock voluntarily agrees to do so.

14. Any unused portion of the Restoration Funds shall be transferred to Hancock when any of the three following conditions are met: (i) provided that no *Force Majeure* Circumstance interferes with restoration, then after the expiration of the later of (a) five years from the date of the final entry of this Consent Judgment by the Court, or (b) four years from the date when Hancock's obligations under paragraph 11 have been completed *and* the Land Trust has obtained all governmental permits and approvals necessary to carry out the Restoration Plan, *or* (ii) ninety (90) days after receipt by all Parties of a written final determination by the U.S. Army Corps of Engineers that the restoration of the Dedication Parcel in accordance with the Restoration Plan is complete and that no further restoration action is required by the Corps under Section 404 of the Clean Water Act with respect to the Dedication Parcel; *or* (iii) with the written assent of the Land Trust after restoration of the Dedication Parcel in accordance with the Restoration Plan. In the event that written assent of the Land Trust has been requested by Hancock in writing and has not been granted within ninety (90) days of the request and of notification of the request to GRN and its counsel, then (A) Hancock may move the Court for a determination that the restoration of the Dedication Parcel in accordance with the Restoration Plan is complete, and (B) any unused portion of the Restoration Funds shall be transferred to Hancock if the Court grants HCL's motion. For purposes of this paragraph, "*Force Majeure* Circumstance" means natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots or other major upheaval, or performance failures of parties outside the control of any Party to this agreement. Either party may, after giving the other party and its counsel thirty (30) days' notice of its intent and basis for doing so, move the Court to extend the deadlines set forth in this paragraph for good cause shown.

15. Notwithstanding any provision herein to the contrary, this Consent Order shall not require any party to perform any act that is contrary to law or that is otherwise prohibited by any government agency, nor shall it prevent any party from performing any act required by a Court or government agency.

Costs of Litigation

16. Hancock shall pay, pursuant to 33 U.S.C. § 1365(d), \$100,000 for Gulf Restoration's costs of litigation within thirty (30) days of the final entry of this Consent Judgment by the Court.

17. In the event of any action or motion to enforce the terms of this Consent Judgment, each party shall bear its own attorneys' fees and cost, notwithstanding any legal provision to the contrary.

Civil Penalties

18. Defendant shall pay, pursuant to 33 U.S.C. § 1319(d), the amount of \$95,000 in civil penalties to the U.S. government within thirty (30) days of the final entry of this Consent Judgment by the Court.

Dismissal

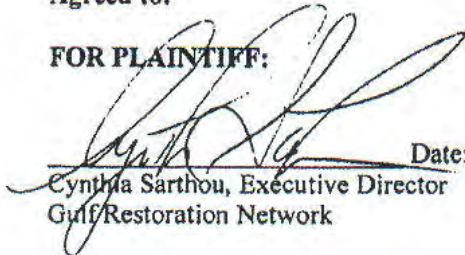
19. Upon completion of all the acts set forth in Paragraphs 6, 7, 8, and 11, the Parties (or either one of them) shall so notify the Court and move for dismissal of this case with prejudice. If a party moves unilaterally for dismissal under this paragraph it shall first seek the consent of the other Party and, if consent is withheld, it shall certify to the Court that it has met and conferred with the other Party concerning the motion.

Jurisdiction


20. Notwithstanding paragraph 19, this Court shall maintain jurisdiction over this matter for the purpose of implementing this Consent Judgment.

Agreed to:

FOR PLAINTIFF:


Cynthia Sarthou, Executive Director
Gulf Restoration Network

Date: 6/28/11


Elizabeth Livingston de Calderon (admitted pro hac vice)
Adam Babich (admitted pro hac vice)
TULANE ENVIRONMENTAL LAW CLINIC
6329 Freret Street
New Orleans, LA 70118
Phone: 504-862-8819
Fax: 504-862-8721

Date: 6/28/11

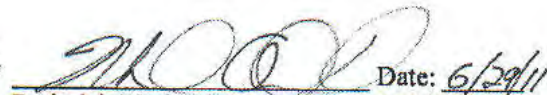
Robert Wiygul (7348)
WALTZER & WIYGUL LAW FIRM
1011 Iberville Drive,
Ocean Springs, MS 39564
Phone : (228) 872-1125; Fax: (228) 872-1128
email: Robert@waltzerlaw.com

Counsel for Plaintiff Gulf Restoration Network

FOR DEFENDANT:


Travis B. Goodloe
Hancock County Development, LLC

Date: 6/29/11


Roderick Mark Alexander, Jr. (100748)
Teri Wyly(7414)
Chris Carron (102930) BALCH &
BINGHAM, LLP - Gulfport
1310 Twenty-Fifth Avenue
Gulfport , MS 39501-1931
228/214-0417
Fax: 228/864-8221

Date: 6/29/11

Raymond B. Ludwiszewski (admitted pro hac vice)
Charles H. Haake (admitted pro hac vice)
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5306
Telephone: (202) 955-8500
Facsimile: (202) 467-0539

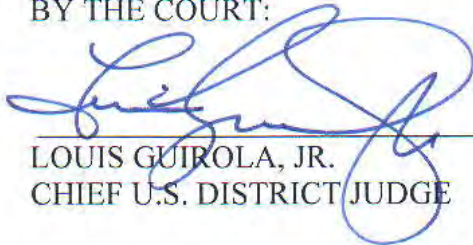
*Attorneys for Defendants Hancock County
Development, LLC*

ENTRY OF ORDER

This matter having come before this Court on the Parties' request for entry of this Consent Judgment, and the Court having reviewed the matter, the Court hereby finds that the terms and provisions of this Consent Judgment are a fair, reasonable and equitable settlement of this matter. The foregoing Consent Judgment is hereby adopted by and made an Order of this Court.

SO ORDERED AND ADJUDGED this 23rd day of August, 2011.

BY THE COURT:



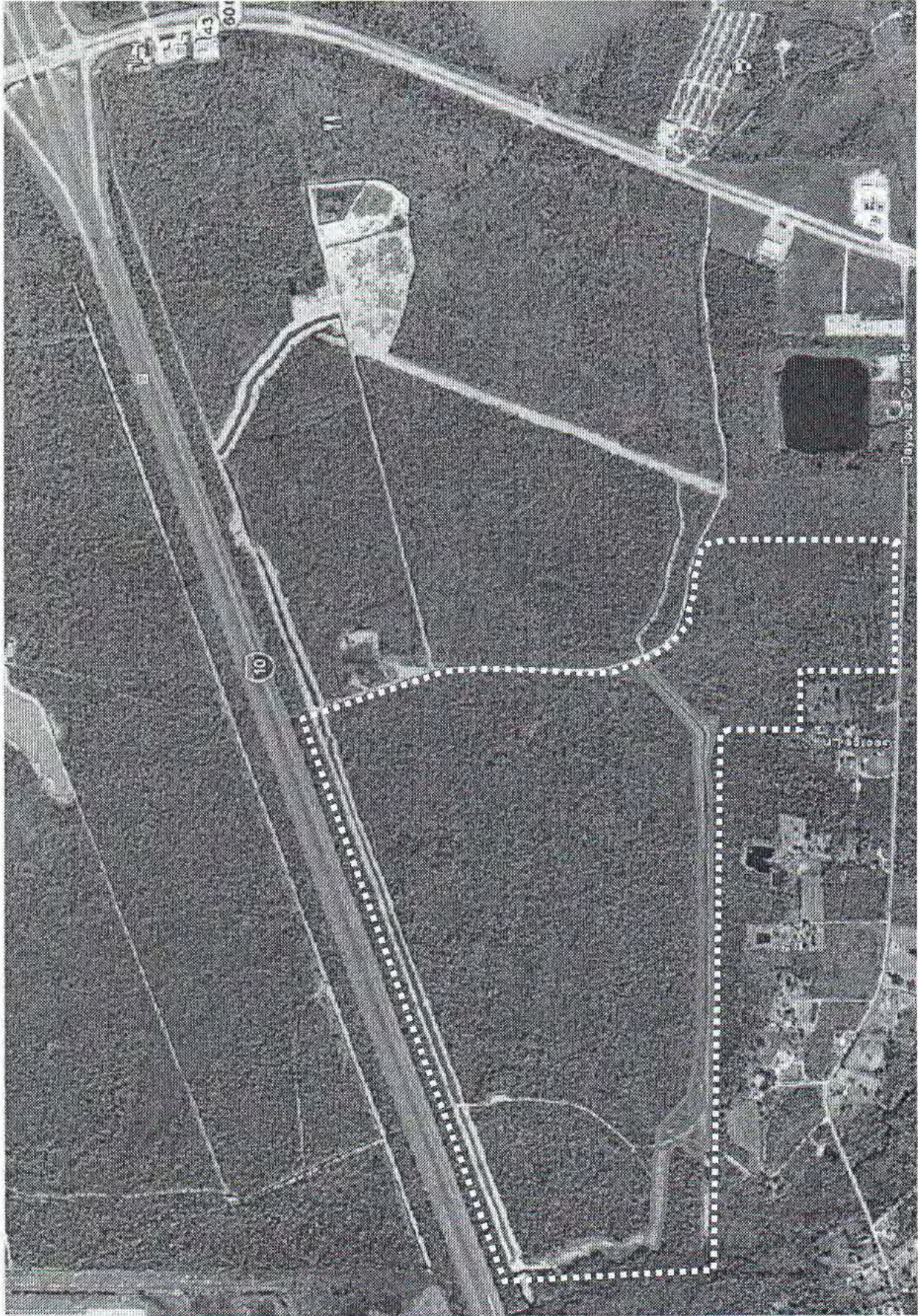
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE

Exhibit A



- Dedication Parcel

Exhibit B



- Dedication Parcel

- Exhibit B Area