

**MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

**THIS MUTUAL RELEASE AND SETTLEMENT AGREEMENT**, (the "Settlement Agreement") is made by and among Hancock County Land, L.L.C. ("HCL"), Gulf Restoration Network ("GRN"), and the Land Trust for the Mississippi Coastal Plain (the "Land Trust").

**WHEREAS**, HCL and GRN entered into a Consent Judgment to resolve litigation in the United States District Court for the Southern District of Mississippi, Case Number 1:08-cv-00186 (the "Lawsuit"), and the Court entered that Consent Judgment on August 23, 2011, Docket Number 145 (the "Consent Judgment") attached hereto and incorporated herein by reference as Exhibit A;

**WHEREAS**, the terms in this Settlement Agreement shall have the meaning given to them in the Consent Judgment;

**WHEREAS**, the Consent Judgment, among other things, required HCL to convey property (the Dedication Parcel) to the Land Trust and to deposit funds into an escrow account (the Restoration Account) for the Land Trust to draw upon to implement a Restoration Plan (attached hereto and incorporated herein by reference as Exhibit B) to restore the Dedication Parcel. The Consent Judgment also provided for the termination of the Restoration Account and return of remaining funds to HCL upon terms and conditions set forth in its Paragraph 14;

**WHEREAS**, HCL and GRN dispute the application of the terms and conditions set forth in Consent Judgment Paragraph 14, as follows:

1. GRN contending that HCL is not entitled to a refund as of August 24, 2016 and that GRN is entitled to an extension from the August 24, 2016 refund deadline of the Consent Judgment; and

2. HCL contending that it is entitled to a refund of all monies in the Restoration Account as of August 24, 2016, in the amount of approximately \$422,673.74, as being 5 years from the date of the entry of the Consent Judgment;

**WHEREAS**, the parties hereto have agreed to resolve their dispute as to the terms and conditions of Consent Judgment Paragraph 14 as follows:

1. distributing \$97,000 of the funds currently in the Restoration Account, from the current balance of \$423,257.62 before these deductions, to the Land Trust as the final payment as to any obligations of or by HCL under the Consent Judgment, with the Land Trust having the right to retain any unused portion thereof;

2. distributing to HCL any remaining funds in the Restoration Account after deducting the \$97,000 payment to the Land Trust and any escrow or other appropriate fees of People's Bank acting as escrow agent;

3. seeking the Court's termination of the Consent Judgment and dismissal of the Lawsuit with prejudice;

Exhibit "A" to Joint  
Motion to Dismiss

**WHEREAS**, pursuant to the Consent Judgment, the parties entered into a Restoration Account Procedures Agreement (attached hereto as Exhibit C and incorporated by reference herein), and, together with the People's Bank acting as escrow agent, the parties entered into the Escrow Agreement (attached hereto as Exhibit D and incorporated by reference herein).

**NOW, THEREFORE**, in consideration of the above premises, the mutual covenants and promises set forth below, and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties hereto, the parties do hereby agree:

1. This Settlement Agreement shall serve as notification under and compliance with the Restoration Account Procedures agreement and pursuant to which the Land Trust shall:

(a) Within three (3) business days of the execution of this Settlement Agreement deliver by email written direction under Escrow Agreement Paragraph 2.1 to effect a disbursement from the Restoration Account to the Land Trust of \$97,000 as the final payment due for payment under the Consent Judgment, with the Land Trust retaining any unused portion of the said \$97,000 upon completion of the Restoration Plan. The Land Trust shall concurrently send a copy of that written direction to the Escrow Agent, GRN, and HCL by email.

(b) Within six (6) business days of the execution of this Settlement Agreement deliver by email written direction under Escrow Agreement Paragraph 2.1 to effect a disbursement from the Restoration Account distributing all remaining funds in the Restoration Account to HCL after deducting the \$97,000 payment to the Land Trust and any due and owing fees due People's Bank as Escrow Agent. The Land Trust shall concurrently send a copy of that written direction to the Escrow Agent, GRN, and HCL by email.

2. Completion of the distribution to and receipt by the Land Trust of the \$97,000 under paragraph 1(a) of this Settlement Agreement shall serve as written confirmation that GRN and the Land Trust have received and accepted all to which either or both are to receive pursuant to the Consent Judgment of August 23, 2011 (Exhibit A); the Restoration Plan (Exhibit B); the Restoration Account; and the Restoration Account Procedures Agreement (Exhibit C) and the Escrow Agreement (Exhibit D).

3. Completion of the distribution to and receipt by HCL under paragraph 1(b) of this Agreement, shall serve as written confirmation that HCL has received and accepted all refunds that it is to receive pursuant to the Consent Judgment of August 23, 2011 (Exhibit A); the Restoration Plan (Exhibit B); the Restoration Account; and the Restoration Account Procedures Agreement (Exhibit C) and the Escrow Agreement (Exhibit D) and that the Land Trust has received the \$97,000 pursuant Paragraph 1(a) of this Settlement Agreement as set forth in Paragraph 2, above.

4. Within one (1) week of completion of both subparagraphs of Paragraph 1, HCL and GRN shall submit a joint motion (in the form attached as Exhibit E) to the Court to terminate the Consent Judgment and dismiss the Lawsuit with prejudice, except that the Court shall expressly reserve jurisdiction to enforce the terms of this Settlement Agreement. The parties shall file this

agreement as an exhibit to their joint motion to terminate.

5. The Land Trust shall use the \$97,000 payment, provided for under ¶ 1 above, towards implementation of the Restoration Plan. If any such funds remain two weeks after the Land Trust submits a certificate of completion to the Corps for Permit No. SAM-2012-00415-DEM, attached hereto as Exhibit F, and the Land Trust reasonably concludes that the permit is satisfied, then the Land Trust may use those funds at its sole discretion.

6. This Agreement and any amendments or extensions hereof may be executed in one or more counterparts and by the manual, electronic, or facsimile signature of the parties hereto. Each of such counterparts, when so executed, will be deemed an original and when taken together will constitute a single instrument.

7. The Parties hereto agree 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 Settlement Agreement.

8. This Agreement shall become effective on the last date executed by any party hereto and shall terminate upon completion of each of Paragraphs 1 – 5, except that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement.

9. The Parties hereto agree that HCL, GRN, and the Land Trust are responsible for and will bear its respective attorney's fees, costs, and expenses of this settlement subject to the relevant provisions of the Consent Judgment. In the event of any action or motion to enforce the terms of this Settlement Agreement, each party shall bear its own attorneys' fees and costs, notwithstanding any legal provision to the contrary.

IN WITNESS of the foregoing provisions, the parties have caused this Settlement Agreement to be duly executed and delivered by authority duly given as of this, the 20<sup>th</sup> day of January, 2017.


**HANCOCK COUNTY LAND, LLC,**  
f/k/a Hancock County Development, LLC,  
an Alabama corporation

By: See attached

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

**GULF RESTORATION NETWORK,**  
a Louisiana not-for-profit corporation

By: 

Printed Name: Cynthia Sarthou

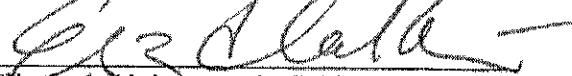
Its: Executive Director

**LAND TRUST FOR THE MISSISSIPPI  
COASTAL PLAIN,** a Mississippi not-for-profit  
Corporation

By: See attached  
Judy Steckler, Executive Director

**Approved as to form:**

See attached  
Mark Alexander, Esq.  
malexander@balch.com  
Counsel for Hancock County Land, L.L.C.

  
Elizabeth Livingston de Calderon, Esq.  
ecaldero@tulane.edu  
Counsel for Gulf Restoration Network

See attached  
Charliene Roemer, Esq.  
croemer@bellsouth.net  
Counsel for the Land Trust for the Mississippi Coastal Plain

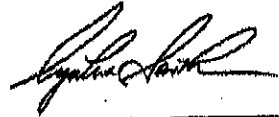
**HANCOCK COUNTY LAND, LLC,**  
f/k/a Hancock County Development, LLC,  
an Alabama corporation

By: 

Printed Name: Travis B Gardloe Jr

Its: Manager

**GULF RESTORATION NETWORK,**  
a Louisiana not-for-profit corporation

By: 

Printed Name: Cynthia Sarthou

Its: Executive Director

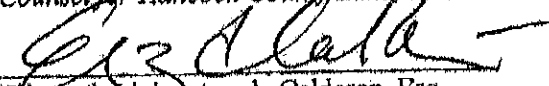
**LAND TRUST FOR THE MISSISSIPPI  
COASTAL PLAIN,** a Mississippi not-for-profit  
Corporation

By: Judy Steckler, Executive Director

**Approved as to form:**



Mark Alexander, Esq.  
malexander@balch.com  
Counsel for Hancock County Land, L.L.C.



Elizabeth Livingston de Calderon, Esq.  
ecaldero@tulane.edu  
Counsel for Gulf Restoration Network

Charlene Roemer, Esq.  
croemer@bellsouth.net  
Counsel for the Land Trust for the Mississippi Coastal Plain

HANCOCK COUNTY LAND, LLC,  
f/k/a Hancock County Development, LLC,  
an Alabama corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

GULF RESTORATION NETWORK,  
a Louisiana not-for-profit corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

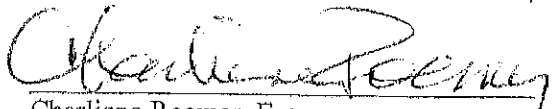
LAND TRUST FOR THE MISSISSIPPI  
COASTAL PLAIN, a Mississippi not-for-profit  
Corporation

By:   
Andy Steckler, Executive Director

**Approved as to form:**

\_\_\_\_\_  
Mark Alexander, Esq.  
malexander@balch.com  
*Counsel for Hancock County Land, L.L.C.*

\_\_\_\_\_  
Elizabeth Livingston de Calderon, Esq.  
ecaldero@tulane.edu  
*Counsel for Gulf Restoration Network*

  
\_\_\_\_\_  
Charlene Roemer, Esq.  
croemer@bellsouth.net  
*Counsel for the Land Trust for the Mississippi Coastal Plain*



**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;

Settlement Agreement  
**EXHIBIT A**

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.

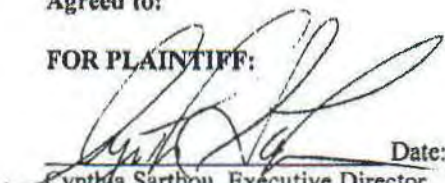


Jurisdiction

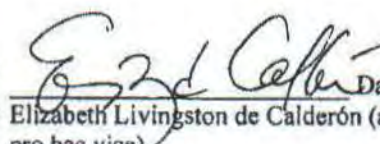
20. Notwithstanding paragraph 19, this Court shall maintain jurisdiction over this matter for the purpose of implementing this Consent Judgment.

Agreed to:

FOR PLAINTIFF:

  
Cynthia Sarthou, Executive Director  
Gulf Restoration Network

Date: 4/28/11

 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

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

 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



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 23<sup>rd</sup> day of August, 2011.

BY THE COURT:

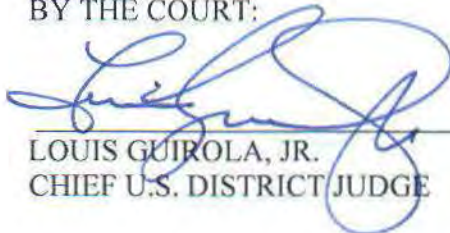
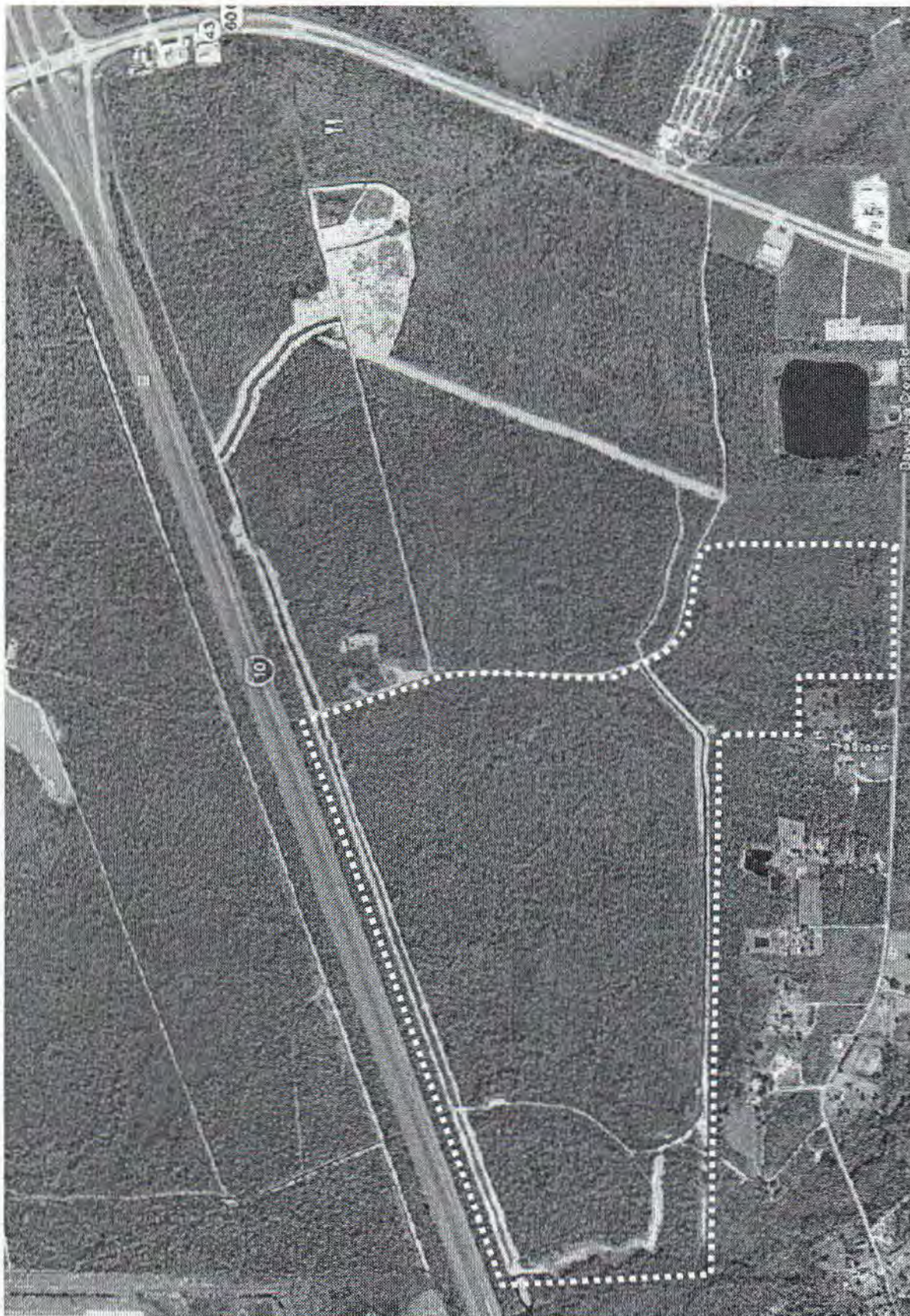
  
\_\_\_\_\_  
LOUIS GUIROLA, JR.  
CHIEF U.S. DISTRICT JUDGE



Exhibit A



- Dedication Parcel



Exhibit B



- Dedication Parcel

- Exhibit B Area



## ECOLOGICAL RESTORATION PLAN

Town of Stennis - Dedication Parcel Project  
Hancock County, Mississippi



*Prepared for:*  
**Land Trust for the Mississippi Coastal Plain**  
**955-A Howard Avenue**  
**Biloxi, Mississippi 39530**

*Prepared by:*  
**Eco-Logic Restoration Services, LLC**  
**Ocean Springs, Mississippi 39564**  
**Barry A. Vittor & Associates, Inc.**  
**Mobile, Alabama 36695**



Submitted to:  
**US Environmental Protection Agency Region 4**  
**US Army Corps of Engineers Mobile District**

Settlement Agreement  
**EXHIBIT B**

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Appendix B. Soil Volume Cross Sections and Tabulations

Appendix C. Vegetation Inventory Data and Species Lists for Target Plant Community Types

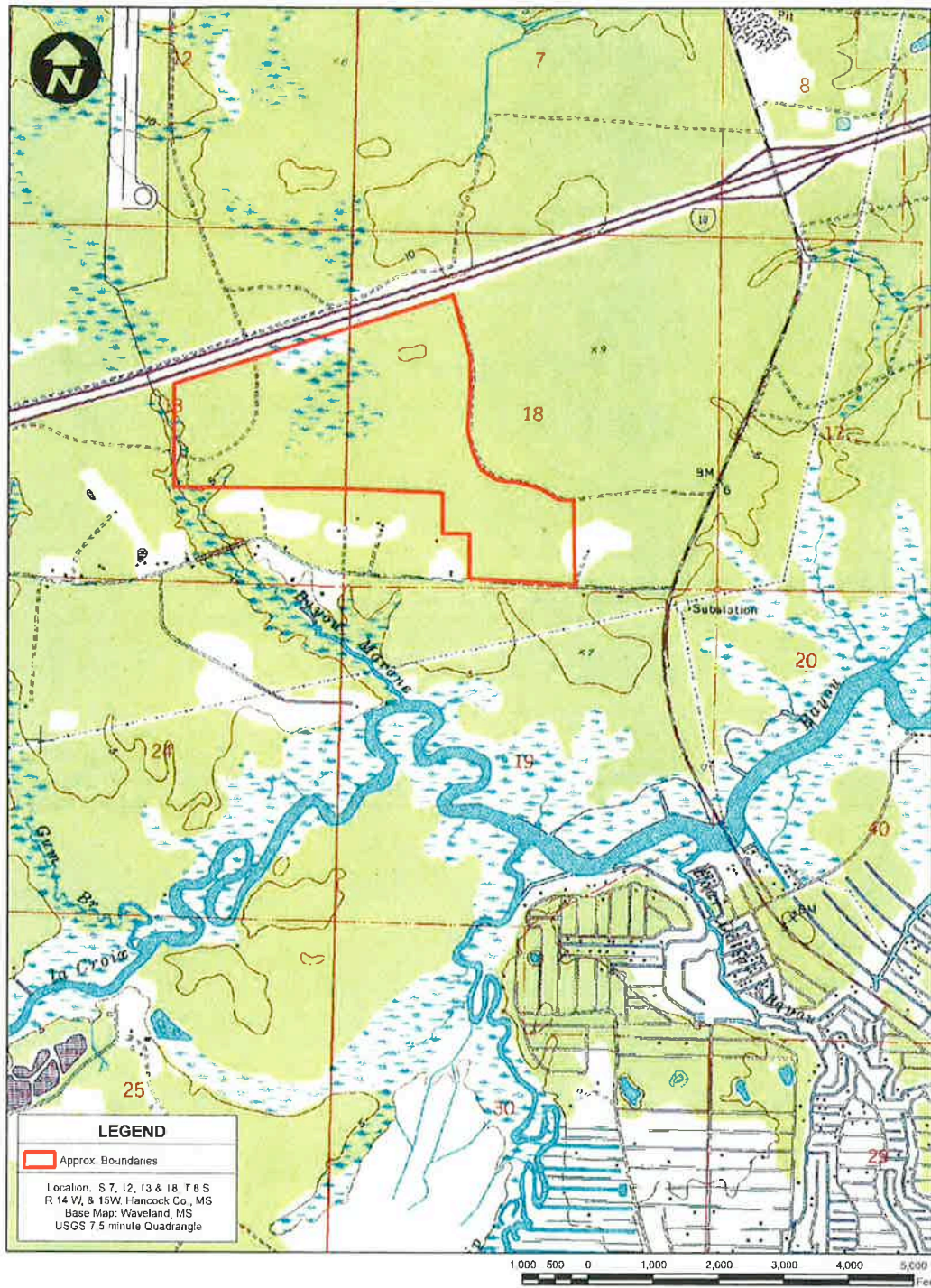
Appendix D. Vegetation Transect Data and Species list for Undisturbed Areas

## **1.0 INTRODUCTION**

The Town of Stennis Dedication Parcel property is located in southwestern Mississippi in Hancock County. It is situated immediately south of Interstate 10 and west of State Highway 603 just north of the City of Bay Saint Louis and lies in portions of Section 13, Township 8 South, Range 15 West and Section 18, township 8 South, Range 14 West (**Figure 1**). The relevant property is comprised of two parcels; the entire area of parcel number 126-0-13-004.001 and the western and southwestern portions of parcel number 134-0-18-002.001 as recorded in the office of the Hancock County Tax Assessor as of the date of this document. A plat map of the subject property is provided in **Appendix A**.

The ecological communities present on the Dedication Parcel property consist largely of wet pine savannahs with smaller areas of cypress/swamp tupelo sloughs and mesic pine flatwoods intermixed. The wetlands and other mesic areas have been disturbed by dredge and fill activities. Ditches were excavated across the property and the spoils cast aside or used to construct primitive roadways. These constructions have impacted the hydrologic functions of the ecological communities by altering the characteristic flow of surface water and groundwater. The impacts have significantly diminished or destroyed the property's functional capacity to attenuate and store floodwaters, trap and store sediments, filter pollutants, and recycle nutrients; thereby increasing the flow of, and deteriorating the quality of, the water that exits the site and enters adjacent traditional navigable waters.

This Ecological Restoration Plan provides information related to restoring the ecological communities and functional capacity of the property. It outlines the steps necessary to complete the ecological restoration on the Dedication Parcel Project; hereinafter referred to as the "Project". The type and spatial extent of impacts on the Project property are outlined along with the volume of soil to be re-distributed and the drainage patterns to be restored. The target habitat types and plant species composition are identified. The approach to conducting the on-site restoration activities is discussed including site preparation, vegetation planting, aftercare, success criteria, monitoring and adaptive management.



**FIGURE 1. Location of the Dedication Parcel Property in Hancock County, MS**

## **2.0 BASELINE DATA AND PLANNING**

The technical approach and scope of work for restoration of disturbed wetlands in the Dedication Parcel Project will be based upon the following data:

- Spatial extent of wetland impacts;
- Types of wetland impacts
- Volumes of soil re-distributed within the Project;
- Plant species assemblages that characterize suitable target wetland habitats and adjoining undisturbed wetlands; and
- Drainage patterns within and adjoining the Project.

Studies and surveys of the restoration area have been conducted to provide these baseline data, and are summarized below.

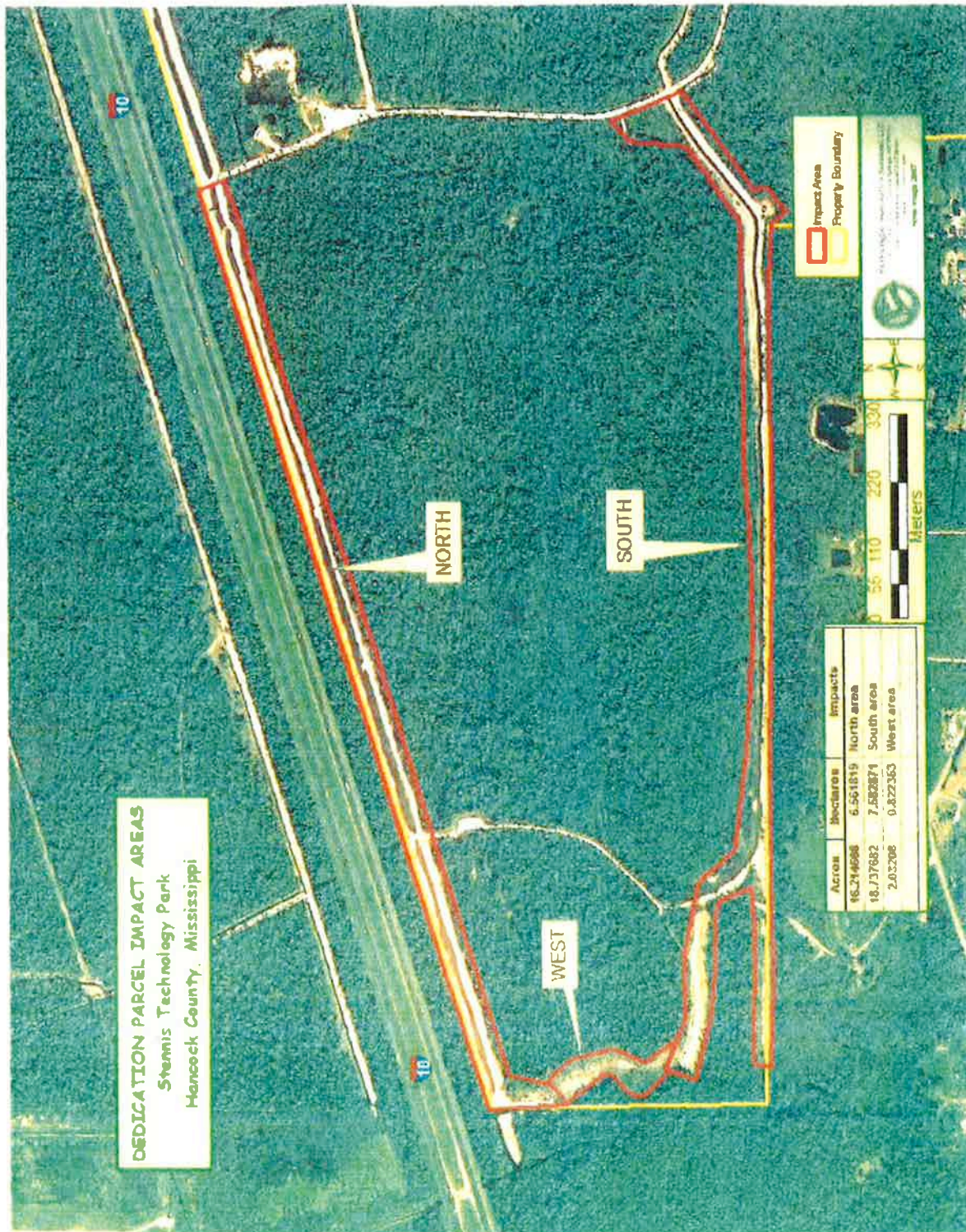
### **2.1 Spatial Extent of Wetland Impacts**

Aerial photography was used to identify areas of apparent wetland ground disturbance, by comparing true color imagery taken in 2004 and 2007. Impacted area limits were estimated by digitizing the apparent boundaries of ground disturbance and overlaying that delineation on the 2007 imagery. Approximately 37 acres of disturbance were delineated; however, a portion of that acreage was determined to be non-wetland, through field inspections of soils in adjoining undisturbed areas. It was determined that the acreage of non-wetland habitat disturbance had no bearing on the spatial extent of the proposed restoration activities because the predominance of sheet flow on the generally flat site would make it difficult to reestablish wetland functions if restored wetlands were bounded by un-restored non-wetlands. **Figure 2** depicts the approximate limits of areas to be restored.

### **2.2 Types of Wetland Impacts**

For the purpose of restoration planning, wetland impacts were classified as mechanized clearing without re-contouring; clearing and re-contouring; filling or excavating. Improvement or creation of roads involved clearing and re-contouring in wetlands. Such areas were filled using soil from ditches excavated through wetlands. Some areas of the Project were cleared with minimal disturbance of roots or soils, and resultant negligible changes in elevation. Such an area





**FIGURE 2. Approximate Limits of Restoration Areas**



exists on the west side of the site that now appears to have stabilized and is recruiting a number of wetland plant species. This area may require only minimal restoration effort. However, filled, excavated, cleared and re-contoured wetlands comprise the majority of impacts observed.

### 2.3 Estimation of Soil Redistribution

Compton Engineering was contracted to measure the volumes of soil excavated from ditches and placed in berms or roads. The purpose of this task was to determine the soil balance within the Project, and the extent to which the restoration contractor would have to bring soil back to the Project to reestablish historic pre-impact grades and drainage. The Compton survey produced cross-section profiles of excavated/filled areas at approximately 34 transects (*ie.*, at roughly 300-ft intervals). Interpolation was used to compute cross section data at 50-ft intervals (**Figure 3**). Volumes were computed from these cross sections and were tabulated to summarize soil volumes needed to refill excavated areas, volumes of reusable soils, and net volume of soil on site. Cross sections and tabulations are presented in **Appendix B**. This analysis indicated that approximately 14,000 cu. yds. of off-site soil may be required to reestablish a uniform natural grade throughout the disturbed areas. This estimate represents a negative soil balance between reusable soil (12,553 cu. yds.) and required fill volume (26,586 cu. yds.)

### 2.4 Target Plant Community Types

Suitable target wetland habitat types were identified during a joint field inspection and consultation among Mike Wylie of US Environmental Protection Agency Region 4, Tad Zebryk of US Army Corps of Engineers Mobile District, Jim Kelly of Eco-Logic Restoration Services, LLC, and Barry A. Vittor of Barry A. Vittor & Associates, Inc. on September 20, 2011. The sites visited were older and had been disturbed by clearing and some re-grading approximately three years prior. They exhibited a relatively good example of native wet pine savannah herbaceous species recruitment and growth. It was agreed by all parties present that the native bunch grasses, sedges and forbs that populated these areas were appropriate for most of the intended restoration and should be incorporated into the success criteria for ultimate restoration of the majority of the Project site. An area of impact in the southwest corner of the Project was historically a cypress/swamp tupelo drainageway and will be restored with pond cypress and swamp tupelo nursery stock.

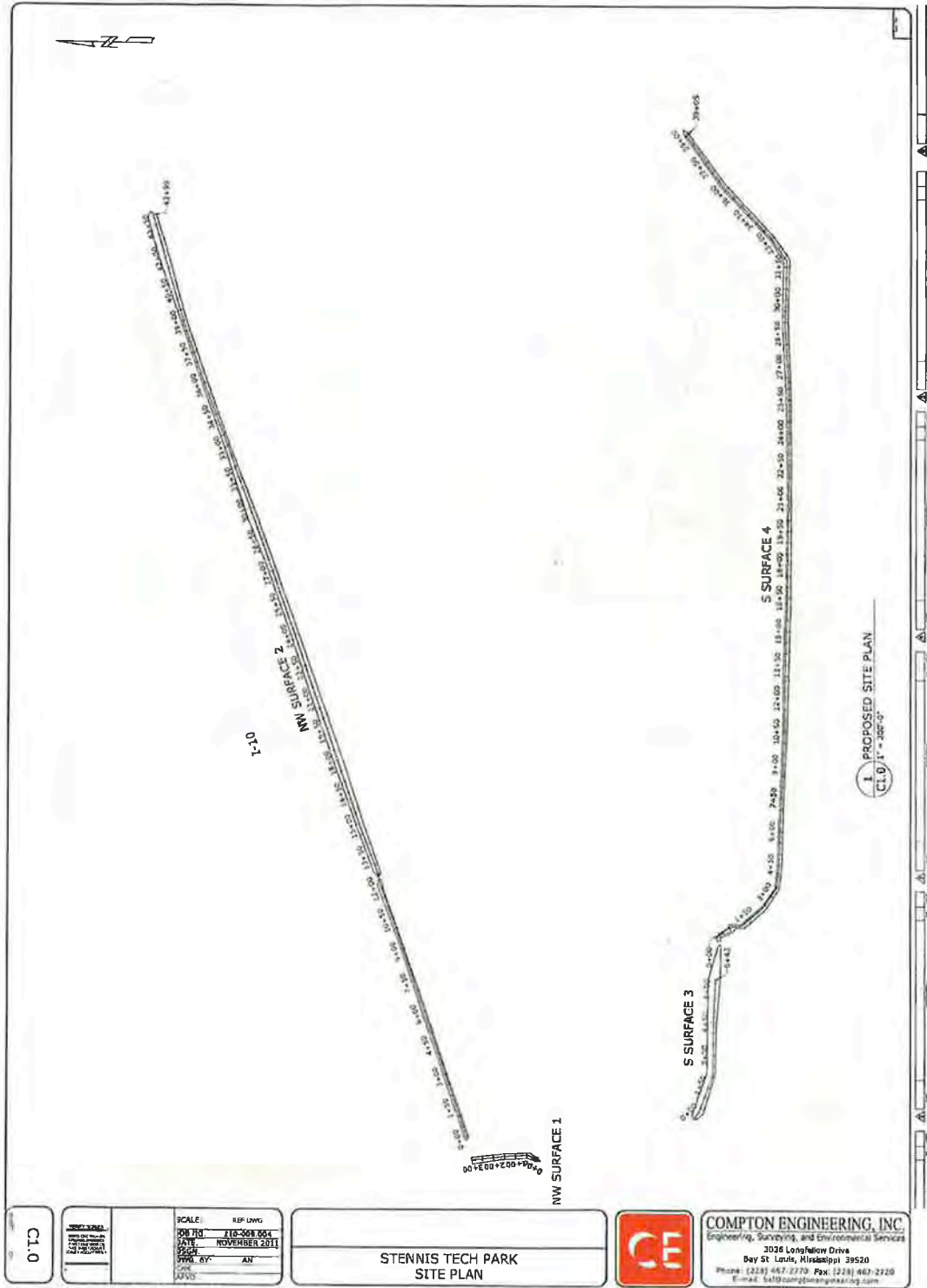


FIGURE 3. Arrangement of Interpolated Cross-Sections of Excavated/Filled Areas

Quantitative surveys of these target habitats were performed by Jim Kelly and Howard Horne (Vittor & Associates botanist) on October 21, 2011. One-meter square quadrats were randomly placed throughout the areas and the percent cover of each vascular plant species present in the quadrat was estimated. The surveys confirmed that indeed a large majority of the plants growing in the older disturbed sites were desirable native wet pine savannah species. Areal cover in the surveyed plots was dominated by wiry filiform sedges in the genus *Rhynchospora* at 26.14%. These may include *R. gracilentata*, *R. chapmanii*, *R. ciliaris*, *R. oligantha*, *R. plumosa* and others. Broomsedge bluestem (*Andropogon virginicus*) and switchgrass (*Panicum virgatum*) dominated the bunch grasses with combined cover of 35.88%. Other desirable savannah species encountered in the plots include witchgrasses (*Dichanthelium* spp.), Coastalplain St. John's wort (*Hypericum brachyphyllum*), Elliot's lovegrass (*Eragrostis elliottii*) and pale meadowbeauty (*Rhexia mariana*). A table of species encountered in the surveyed plots and their relative percent cover is shown in **Appendix C**.

A quantitative survey of undisturbed portions of the cypress/swamp tupelo drainageway in the southwest corner of the Project was conducted on September 7, 2011 by Kelly and Horne. A random point was located at the edge of the undisturbed wetland and a tape measure was extended perpendicular to the drainageway across the wetland to the other side. The presence of vascular plant species was recorded at one-foot intervals along the tape. This survey confirmed that the wetland is dominated by pond cypress (*Taxodium ascendens*) at 19.80% relative cover. Swamp tupelo (*Nyssa biflora*) comprised 13.86% relative cover and laurel oak (*Quercus laurifolia*) and red maple (*Acer rubrum*) comprised 28.71% combined relative cover. A table of species encountered along the surveyed transects and their relative percent cover is available in **Appendix D**.

Wetland plant community types in undisturbed areas of the Dedication Parcel property were surveyed on September 7-8, 2011 by Kelly and Horne to identify species that had potential for seed collection and installation in restored areas of the Project. Most of the over 170 plant species identified during that survey were wetland species. Exotic invasive species (eg., *Triadica*



*sebifera* and *Imperata cylindrica*) were also found in the site. The complete species inventory is presented in **Appendix D**.

## 2.5 Drainage Patterns

The Dedication Parcel and surrounding lands are generally flat but USGS topographic maps and USDA soil maps depict a few drainage pathways in the area. Surface sheet flow runs from north and east to south and west across the site. Historically, there was minimal flow into the Parcel from the east side of the all-weather gravel road that marks its east boundary. Following the construction of roads and excavation of ditches on the property east of the Dedication Parcel, large amounts of surface water were diverted from their normal southern and eastern routes and shunted west under the all-weather gravel road and onto the Parcel. Most of the Parcel drains into a small tributary of Bayou Marone which is close to the west boundary. Some runoff historically entered the Parcel from south along the southwest property boundary and flowed north and west to this same tributary. Some water in the extreme southeast portion of the Parcel flows to the south and east and exits the property through culverts under Bayou LaCroix Road.

## 3.0 RESTORATION APPROACH

### 3.1 Key Restoration Parameters

Freshwater wetlands such as the flat pinewoods present in these properties are particularly sensitive to parameters such as hydroperiod, land elevation and substrate type. Other habitat variables that affect these wetlands include landscape position (relative to drainage patterns), flood frequency, and changes in degree of inundation. Vittor & Associates coordinated the preparation of a guidebook for wetland restoration in 1996, for the U.S. Army Corps of Engineers, Waterways Experiment Station. Table 5D-5 from that book is included here as Table 1 to summarize key parameters that should be considered in restoring pine-dominated and other freshwater wetlands.

**TABLE 1. KEY ENVIRONMENTAL PARAMETERS IN FRESHWATER WETLANDS (Table 5D-5)**

| Parameter  | Comment  |
|--|--|
| <b>Physical</b>  |  |
| Hydroperiod  | Hydroperiod refers to the amount, length, and a seasonal timing of inundation or soil saturation. It is the single most significant determinant of wetland vegetation within an ecoregion. Brinson (1993a) uses hydrologic variables and geomorphology alone to infer much of the wetland function.  |
| Hydrodynamics  | Hydrodynamics refers to patterns of water fluctuation and may be either vertical or unidirectional horizontal in freshwater wetlands. These patterns control the potential directions of material cycling (import/export within biotic zone vs. cycling the same materials into and out of the biotic zone).   |
| Water source   | Trapping efficiency for nutrients is related to the residence time of the wetland, which is controlled by wetland volume and water inflow and outflow rates. Surface water sources have substantially more potential for nutrient inputs than groundwater sources in most cases.   |
| Flow velocity  | Higher duration of contact between flowing water and vegetation maximizes sediment trapping and production export.   |
| Land surface elevation   | The interaction of hydroperiod and land surface controls the soil moisture regime, which also influences the pattern of soil aeration through the year. Most terrestrial plants are intolerant of continuously depleted soil oxygen; the length of time or season in which this is tolerated is a major control on terrestrial wetland vegetation.         |
| Substrate type   | Fine-grained mineral soils and peats are less permeable than coarser-grained substrates, thereby allowing surface water to be maintained.  |
| Proportion of open water habitat   | Open water is required to support fishes.  |
| <b>Chemical</b>  |  |
| Nutrient availability  | Few wetlands, except bogs and some unvegetated wetlands, are nutrient deficient; only bogs are likely to be maintained in this state over successional time. Excess nutrient shifts aquatic bed wetlands toward algae and results in depletion of dissolved oxygen in open water habitats.   |
| Dissolved oxygen within open water habitat   | Dissolved oxygen levels will exert significant control on the presence or absence of aquatic fauna.  |
| pH   | Soil pH (or salinity for alkaline environments) influences the distribution of plant species at the extremes (acid soils in northern climates, alkaline soils in arid climates).   |
| <b>Biological</b>  |  |
| Structural diversity (eg., vegetative form richness, interspersions of vegetation and water) | Structural diversity (from abiotic or biotic means) is a necessary, though not sufficient, requirement for community diversity at the next higher level: topographic or substrate diversity gives rise to plant/invertebrate diversity, plant/invertebrate diversity gives rise to avian/mammal/fisheries diversity, and so on. Structure can be restored. |

**TABLE 1. (Cont.)**

| Parameter  | Comment   |
|--|---|
| <b>Disturbance</b>   |   |
| Flood frequency  | Floods control the hydroperiod/soil moisture/soil aeration regime and also influences the amount and type of allocthonous inputs (nutrients, sediment).   |
| Fire frequency   | Fire is the only disturbance known to alter peatlands, allowing more minerotrophic forms to become established. Fire also can alter successional patterns in emergent, forested, and shrub wetlands.  |
| Change in degree of inundation   | A change in inundation can happen catastrophically due to landsliding, volcanism, erosion ( <i>eg.</i> , natural or anthropogenic drainage), or other biotic activity ( <i>eg.</i> , beavers, small dam construction). See hydroperiod above for implications.  |
| <b>Landscape</b>   |   |
| Landscape position relative to drainage divide, and relative to inflows and outflows; 1993a) | Landscape position can influence the amount, timing, and rate of inputs and outputs. ( <i>eg.</i> , Wetlands near drainage divides have relatively small contributing areas that limit the flux of inputs and outputs. Their hydroperiods are related to flashy flooding regimes if groundwater. Wetlands low in the drainage have higher potential for material inputs and outputs and water fluctuations related to longer, slower rises in the water table, regardless of water source. Flood flow attenuation peaks at a wetland area to watershed area ratio of 5 percent. |
| Type, quality, and quantity of wetlands present in target and adjacent watersheds            | Target type of wetland to be restored should complement existing wetlands.  |



### 3.2 Site Preparation and Restoration Implementation

All site preparation and restoration implementation activities will be conducted under the supervision of the Project Manager. Planned activities must conform to accepted ecological restoration practice and comply with the letter and intent of this restoration plan. All activities to be conducted on the Project site must be submitted to and approved by the Project Manager.

The Dedication Parcel is relatively flat, with few defined drainageways, and silt fencing has been effective in preventing sediment transport into surface waters and adjacent undisturbed wetlands. Consequently, altered land elevation and hydroperiod/hydrology in wetlands are amenable to restoration measures that simply reestablish historic pre-impact grades. Throughout the site preparation effort, best management practices will be implemented. This includes stopping earthwork during storm events; minimizing heavy equipment damage in undisturbed vegetated areas; use of mats as necessary to minimize rutting in soft soils; and installation of silt fencing.

Thousands of linear feet of silt fencing remains on the property under prior Corps instructions. The placement of much of that fencing is not suitable to prevent run-off from the restoration areas. Existing silt fencing that is inside the areas to be restored would be removed prior to commencing earthwork. If any existing silt fencing is found to be serviceable and properly placed it may be used with the approval of the Project Manager. New silt fencing will have to be installed where necessary to prevent sedimentation in adjoining undisturbed habitats during site preparation earthwork. Turbidity barriers will be installed at sites where drainageways connect to Bayou Maron. Soils across the properties are characterized by a thin topsoil layer with sandy loam or loamy sand subsoils. As a result, replacement of wetland soils in excavated sites can be performed with only minimal attention to soil layering; however, some organic topsoil should be spread across the surface of the restored areas, to facilitate vegetation re-growth.

Flows of water into the Dedication Parcel from the property east of the all-weather gravel road/property boundary will be blocked by plugging or removing culverts that direct such flows into the Parcel. Some armoring of the ditches along the gravel road may be performed to preclude erosion of restored areas during severe rainfall events. While the specific methodology

to be employed here will be based on site conditions and the minimum requirements of the Consent Judgment Paragraph 9.a., it is anticipated that sufficient riprap may be required to fill the ditches to an elevation equal to the natural grade of the adjacent areas.

Fill material that had been placed along all of the newly constructed ditches or ponds on the Project will be pushed back into those excavations. Such areas will be back-filled in the uppermost points first, so that water in those areas is pushed down-slope to facilitate suitable compaction of the reintroduced soil. Pooled water will be pumped from the excavations where necessary during this process. Surficial soils will be pushed by a low-impact (wide-track) bulldozer or excavated with a smooth-edge trackhoe bucket. Most areas that were re-contoured contain relatively sandy soils and rutting by earth-moving equipment would not be a severe problem except during periods of high rainfall. The depth of the cut will be monitored throughout the soil removal process, to minimize removal of the original ground surface soils and root mat.

As the target elevations are being reestablished within the impacted wetlands, a topsoil surface layer will be placed in areas that are found to contain insufficient organic surface soils. Topsoil will be obtained from on-site materials wherever practicable. Off-site sources of suitable topsoil could be used as necessary to provide approximately 4 inches of organic surface soil. Any and all fill material used will be of the same or similar type of soils as exist at and near the fill location and be approved for use by the Project Manager.

Restored areas that have been compacted by earth-moving equipment will be de-compacted by discing the soil to a depth of at least 12 inches (30 cm). This will enhance soil water retention and oxygenation and prevent ponding/rutting. De-compacting could also produce reusable soil that could be returned to excavated sites, reducing the quantity of soil that may need to be hauled to the restoration areas.



### 3.3 Wetland Re-vegetation

Following the approval of site re-contouring to the desired elevations, the Project area will be allowed to consolidate and stabilize for a period of 6-8 weeks. During this time, it is expected that some desirable native plant species characteristic of Gulf Coastal Plain wet pine savannahs will begin to colonize the site. This colonization will be monitored to ensure that the desired plants are indeed establishing themselves and increasing their areal cover. With the approval of the Project Manager, this colonization would be allowed to continue if it appears to be on an appropriate trajectory to meet the restoration success criteria outlined below in Section 4.0.

Should recruitment of desirable native plant species be deemed too slow or inadequate to meet success criteria by the Project Manager, native pine savannah herbaceous plant species' seeds would be collected from undisturbed on-site areas in the Dedication Parcel property, with the intention of seeding the restored area. Collection efforts will occur in fall and would focus on key wet pine savannah species as identified in the inventories from the surveys conducted and described in Section 2.4 above and the lists of species shown in **Appendix C**. Final lists of species to be collected, if necessary, will depend on the current site conditions, seed availability at that time, and will meet with the approval of the Project manager. Enough clean, weed-free seed would be collected and applied to meet or exceed a rate of 15 lbs. per acre.

Wetlands in the Dedication Parcel are characterized by relatively sparse tree cover, including slash pine (*Pinus elliottii*), sweetbay (*Magnolia virginiana*), red maple (*Acer rubrum*), cypress (*Taxodium ascendens*), and tupelo gum (*Nyssa biflora*). Slash pines dominate most of the wetlands that adjoin impacted areas and occur at varied densities, but may average 100 trees per acre where logging has not occurred. Bays, gums, and cypress are present in somewhat wetter zones scattered through the site and appear to have a combined density of less than 20 trees per acre in wetlands that surround the recently impacted wetlands.

Sub-canopy species are important in these pine-dominated wetlands largely due to historic fire suppression. The principal woody species in the mid-story include small slash pine and other trees, yaupon (*Ilex vomitoria*), gallberry (*Ilex glabra*), and myrtle holly (*Ilex myrtifolia*).

Ground cover species in the undisturbed wetlands include a wide variety of herbaceous species, including pitcher plants (*Sarracenia* spp.), weak rush (*Juncus debilis*), spikerush (*Eleocharis* spp.), sedges (*Carex* spp.), and numerous others. Most of the species found in the affected areas are classified as facultative wetland forms, which can occur in habitats that range from wetland to upland. Obligate wetland species (eg., pitcher plants) are associated with habitats that are nearly always saturated or flooded, and occur primarily in depressions and shallow drains.

Generally, the types of wetlands that have been altered exhibit a high level of natural recolonization after natural land elevations have been reestablished. This is especially true where the native root mat and topsoil layer has not been removed or severely damaged, and can be re-exposed by removing overlying soil. Many of the areas that would be restored in the Dedication Parcel appear to contain these surface soil components, and should exhibit good re-growth of ground cover and shrub species.

Most hardwood tree species are less likely to become reestablished quickly through seed germination after natural grades have been established, while slash pine and cypress seeds may germinate readily and seedlings of these species can be early colonizers of disturbed wet savannahs. Re-planting of newly restored wetlands would focus on swamp tupelo and cypress. Slash pine would not be planted initially, but would be planted if natural colonization by pine seedlings were not to occur within about one year of completion of reestablishing natural grades. Tree transplants would be at least 3 feet tall with a main stem caliper of at least 0.25 inch. Approximately 50 to 100 trees would be planted per acre including roughly equal proportions of the target species. Planting would be performed during the period of November-March when the transplants are dormant. The transplanted trees would be arranged according to the natural landscape with swamp tupelo and placed in shallow swales or drains. Each transplant would be tagged with a bright plastic ribbon for easy recognition.

### 3.4 Exotic Species Control

Chinese tallow trees (*Triadica sebifera*) have become established in areas that were altered many years ago by road building, gas well operations, and silviculture operations. This exotic invasive



species can be very aggressive and must be controlled to prevent further spreading. Cogongrass (*Imperata cylindrica*) also has been introduced in these disturbed areas but is poorly adapted to wetland habitats and is unlikely to encroach upon restored wetlands areas. Nonetheless, it would be important to attempt to control this species as well. Approved herbicides would be applied as needed to reduce the numbers/aerial coverage of both exotic species.

#### **4.0 CRITERIA FOR SUCCESS**

The objective of this restoration plan is to reestablish wet pine savannah and cypress/swamp tupelo wetlands in areas that have been altered by recent clearing, excavation, filling and/or re-contouring. The extent to which the restoration effort attains this goal will be assessed on the basis of the following criteria for success:

- At least 85% of tree transplants survive at least 12 months after planting and at least 40 native wetland trees per acre (excluding pines) are present at the end of the 5-year monitoring period.
- A pine tree density of no more than 100 nor less than 50 trees per acre has been achieved by the end of the 5-year monitoring period.
- Groundcover of characteristic native wetland herbaceous plant species is at least 75% of the cover in the pine savannah restored areas, measured as percent cover, at the end of the 5<sup>th</sup> year. Cypress/swamp tupelo wetlands will not be required to meet groundcover criteria.
- Exotic invasive plants represent no more than 1% of the vegetation measured as percent cover at the end of the 5<sup>th</sup> year.
- Drainage patterns and land elevations conform closely to pre-impact conditions based on the characteristics of adjoining habitats.

#### **5.0 MONITORING**

Qualitative monitoring of the restoration areas will be conducted quarterly for the first year following completion of restoration implementation. A pedestrian survey of the site at regular intervals would serve to identify any noticeable failures in the restored areas such as erosion, subsidence, ponding, exotic species invasion, tree mortality and the like during the critical first year of establishment. This will allow for sufficient reaction time on the part of the Project

Manager to implement some type of adaptive management strategy. Qualitative monitoring will continue on a bi-annual basis for years two through five, with one of these events occurring concurrently with the quantitative monitoring outlined below.

An annual quantitative monitoring of the site will be conducted after the first year of establishment and for the four years following to assess the site's trajectory toward restoration success. All wetland sites will be inspected for groundcover species recruitment and establishment, natural re-colonization by tree and shrub species, and planted tree success. Belt transects will be established at regular intervals across the restored areas. The number and location of these transects will be reviewed and approved by the Project Manager. The number and species of trees and shrubs, both planted and recruited, will be tallied in a ten-meter wide belt along these transects. The percent cover of groundcover species will be quantified by recording their occurrence along transects at one-foot intervals. The following observations will be reported:

- Density (trees per acre) of planted trees to assess planted tree mortality;
- Percent cover and diversity of native herbaceous species;
- Density (trees per acre) of native tree species recruited to the restoration site;
- Density (stems per acre) of native shrub species recruited to the site;
- Percent cover of exotic invasive species;
- Undesirable drainage patterns or unsuitable hydrologic conditions; and
- Any other conditions that could affect restoration success.

The results of each survey will be provided to the responsible Federal and Mississippi State agencies within 30 days of fieldwork.

## **6.0 ADAPTIVE MANAGEMENT**

Although the restoration measures described above are expected to result in successful reestablishment of wetland habitat, there are likely to be some areas that do not fully meet the success criteria. Generally, a lack of success can result from problems with land elevations that

affect drainage or hydroperiod. For example, refilled ditches may exhibit unusual settlement or compaction and they may have overly prolonged ponding that prevents growth of groundcover or most wet pinewoods tree species. Other locations may remain slightly higher than intended, resulting in better drainage and shorter periods of flooding or saturation. Other common problems are transplant damage by herbivores such as deer and beaver or exotic plant species invasions that threaten project success. In addition, some loss of bareroot transplants will occur regardless of site suitability.

When these events occur, the Project Manager must be able to react quickly and devise some type of adaptive management plan that corrects the problem and sets the site back on an appropriate trajectory to meet the success criteria. Each monitoring survey report will identify any issues that could affect restoration success and will report those to the Project Manager. At that time, the site biologist and the Project Manager can formulate remedial actions that should correct those problems. In the event that substantial problems are observed (as opposed to routine issues such as incidental tree mortalities), potential remedial actions would be discussed with the responsible agencies and a plan of action would be devised that addressed agency concerns and proposed corrective measures. For example, areas that exhibited excessive subsidence may require additional fill material and re-planting. Areas that have very poor ground cover growth may require additional seeding, while eradication of exotic invasive species such as Chinese tallow tree could involve herbicide application or manual removal. Agency concurrence with such actions will be obtained before they are implemented.



## RESTORATION ACCOUNT PROCEDURES

*Capitalized and underlined terms used in the Restoration Account Procedures and not otherwise defined will have the meanings given them in the Consent Judgment.*

Subject to the following terms and conditions, the Land Trust will have the right to withdraw Restoration Funds to pay for all costs incurred for the restoration of the Dedication Parcel and which are provided for in the Consent Judgment entered by the court on August 23, 2011, in *Gulf Restoration Network v. Hancock County Development, LLC*, Case No. 1:08-cv-00186-LG –RHW (S.D. Miss.) (the “Consent Judgment”):

1. Notice of Quote.

- a. Within three (3) business days of the Land Trust’s having received a quote—other than the bids contemplated by the request for cost estimate process described in Paragraph 11 of the Consent Judgment—for restoration-related work in furtherance of the Land Trust’s restoration of the Dedication Parcel (“Restoration Work”), the Land Trust shall forward by electronic mail a copy of the quote to the Parties.
- b. From the date the quote is sent to the Parties by the Land Trust, Gulf Restoration and Hancock will then have five (5) business days to inform the Land Trust of any reasonable objection that either party has to the Land Trust’s incurring any or all of the costs described in the quote.
- c. If no objection is timely raised by either Gulf Restoration or Hancock, the Land Trust may authorize the Restoration Work based on the costs described in the quote; provided, however, the Land Trust shall comply with the requirements of Paragraph 2 before paying any invoice received in connection with Restoration Work conducted pursuant to the quote. Any dispute concerning whether an objection is reasonable will be decided by the Court pursuant to Paragraph 10 of the Consent Judgment.

2. Notice of Invoice.

- a. Within three (3) business days of the Land Trust’s having received either an invoice for Restoration Work, including administrative costs applicable thereto, or a contractor’s written demand for payment of an initial deposit prior to the contractor’s commencing Restoration Work (an invoice or an initial deposit demand each separately referred to as an “Invoice”), the Land Trust shall forward by electronic mail a copy of the Invoice to the Parties.

- b. From the date the Invoice is sent to the Parties by the Land Trust, Gulf Restoration and Hancock will then have five (5) business days to inform the Land Trust of any reasonable objection that either party has to the Land Trust's paying the Invoice. An objection that could have been made under paragraph 1(b) shall not be deemed reasonable if made pursuant to this paragraph 2(b).
- c. If no objection is timely raised by either Gulf Restoration or Hancock, the Land Trust may withdraw Restoration Funds to pay the Invoice. Any dispute concerning whether an objection is reasonable will be decided by the Court pursuant to Paragraph 10 of the Consent Judgment.

3. Quarterly Updates. On or before the fifteenth (15<sup>th</sup>) day of each January, April, July, and October, the Land Trust shall submit to the Parties a report (the "Quarterly Update") summarizing the following information for the previous three (3)-month period:

- a. dates and amounts of withdrawal of Restoration Funds;
- b. a list of all Restoration Work Invoices received by the Land Trust and applicable dates of payment of the Invoices;
- c. any remaining balance of Restoration Funds which may have been withdrawn but not yet spent;
- d. copies of all Invoices referenced in the Quarterly Update; and
- e. documentation confirming the Land Trust's payment of the Invoices referenced in the Quarterly Update (*e.g.*, copies of monthly bank statements or canceled checks).

4. Nothing herein shall alter or abrogate any of the terms of the Consent Judgment.

5. Persons to Whom Notice Must Be Provided. All notices and other communications to be given by reason of the provisions of these Restoration Account Procedures must be sent to each of the email addresses below:

If to Hancock:

Charlie Haake ([chaake@gibsondunn.com](mailto:chaake@gibsondunn.com))

Jim Crosby ([jcrosby@crosbylegal.com](mailto:jcrosby@crosbylegal.com))

If to Gulf Restoration:

Elizabeth Livingston de Calderon ([ecaldero@tulane.edu](mailto:ecaldero@tulane.edu))

Adam Babich ([ababich@tulane.edu](mailto:ababich@tulane.edu))

If to Land Trust:  
Judy Steckler (judyltmcp@aol.com)

6. Amendment. Any amendment to these Restoration Account Procedures will require the written consent of all of the parties, which consent shall not be unreasonably withheld. Any dispute concerning amendment of the Restoration Account Procedures under this paragraph will be decided by the Court pursuant to Paragraph 10 of the Consent Judgment.

7. Counterparts. These Restoration Account Procedures and any amendments or extensions hereof may be executed in one or more counterparts and by the manual or facsimile signature of the parties hereto. Each of such counterparts, when so executed, will be deemed an original and when taken together will constitute a single instrument.

IN WITNESS of the foregoing provisions, the parties have caused these Restoration Account Procedures to be duly executed and delivered by authority duly given as of this, the 29<sup>th</sup> day of November, 2011.

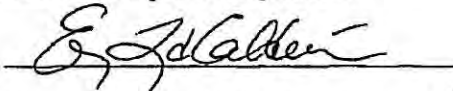
**HANCOCK COUNTY LAND, LLC,**  
f/k/a Hancock County Development, LLC,  
an Alabama corporation

By: 

Printed Name: Charles H. Hester

Its: Council of Record

**GULF RESTORATION NETWORK,**  
a Louisiana not-for-profit corporation

By: 

Printed Name: Elizabeth Livingston de Caldeón

Its: Council of Record, Tuleare Environmental Law Clinic

**LAND TRUST FOR THE MISSISSIPPI COASTAL PLAIN,** a Mississippi not-for-profit corporation

By:   
Judy Steckler, Executive Director



## **ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT**, (the "Agreement") is made by and among The Peoples Bank ("Escrow Agent"), Hancock County Land, L.L.C. ("HCL"), Gulf Restoration Network ("GRN"), and the Land Trust for the Mississippi Coastal Plain (the "Land Trust").

**WHEREAS**, the Land Trust has agreed to act as the designated land trust under the Consent Judgment entered into by HCL and GRN and ordered by the United States District Court for the Southern District of Mississippi on August 23, 2011 in Case Number 1:08-cv-00186, Docket Number 145 (the "Consent Judgment," attached as Exhibit "A" to this Agreement);

**WHEREAS**, the paragraph 7 of the Consent Judgment requires HCL to establish an escrow account designated as the Restoration Account.

**WHEREAS**, concurrent with this Agreement, HCL is depositing the sum of \$100,000 with this Escrow Agent, pursuant to Paragraph 7 of the Consent Judgment. The funds in the Restoration Account shall at all times be fully insured by the Federal Deposit Insurance Corporation ("FDIC"). For purposes of this Agreement "fully insured," "full insurance coverage," and "fullest insurance coverage" mean at or to the maximum allowed through the FDIC using an account type that provides the highest amount or level of FDIC coverage.

**WHEREAS**, HCL will deposit into the Restoration Account an additional sum with the Escrow Agent pursuant to and consistent with paragraph 11 of the Consent Judgment (together, the "Funds") all of which funds shall be fully insured by the FDIC at all times;

**WHEREAS**, in consideration of a \$500.00 initial fee and \$100.00 quarterly fee for the life of the account thereafter, Escrow Agent is agreeable to act as escrow agent under this Agreement and to disburse the Funds in accordance with the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set for the below, the parties agree:

1. Establishment of Escrow Account.

1.1. An escrow account shall be established at The Peoples Bank, Biloxi, Mississippi branch under this Agreement by HCL with The Peoples Bank as the designated Escrow Agent who shall hold and distribute the Funds from time to time as hereinafter set forth (the "Restoration Account").

1.2. HCL, GRN, the Land Trust, and the Escrow Agent agree that the Funds in the Restoration Account are to be used exclusively for the purposes set forth for the Restoration Account described in the Consent Judgment.

2. Disbursements.

2.1. The Escrow Agent shall disburse all or a portion of the Funds in accordance with the following:

(a) For those purposes set forth for the Restoration Account described in the Consent Judgment, including for those activities set forth in the Restoration Plan (attached at Exhibit "B"), the Escrow Agent shall disburse appropriate funds upon receipt of the written direction of the Executive Director of the Land Trust or her designated employee at the Land Trust in accordance with the procedures set forth in the Restoration Account Procedures Agreement (attached at Exhibit "C") (e.g., that there is no timely objection by GRN, HCL, or the Land Trust to such distribution(s)).

(b) Upon written confirmation from HCL and GRN of the meeting of a condition for return of any unused portion of Funds to HCL under paragraph 14 of the Consent Judgment, then the Escrow Agent shall release the balance of the Funds to HCL.

3. Escrow Agent's Responsibility.

3.1. Upon disbursement of all or any portion of the Funds in accordance with this Agreement, Escrow Agent shall have no further responsibility with respect to the amounts so disbursed. In this regard, it is expressly agreed and understood that in no event shall the aggregate amount of disbursements from the Escrow Account by Escrow Agent exceed the amounts deposited by HCL in the Escrow Account plus any accrued interest.

3.2. HCL, GRN, and the Land Trust understand and agree that the duties of the Escrow Agent are purely ministerial in nature. HCL, GRN, and the Land Trust further agree that that Escrow Agent shall not be responsible for the performance by Land Trust, GRN, or HCL under this Agreement or any other Agreement.

3.3. Escrow Agent shall furnish to the Land Trust, HCL, and GRN an accounting of the receipts in, and disbursements from, the Escrow Account, upon request.

3.4. Escrow Agent shall at all times maintain all funds in the Restoration Account subject to the fullest insurance coverage by the FDIC. Escrow Agent shall notify all the parties of any amount of the Funds in the Restoration Account that will or may not be actually covered by FDIC.

4. Dispute Resolution. Any dispute with respect to the holding, use, and/or distribution of the funds shall be resolved as set forth in the Consent Judgment without any costs, fees, or expenses incurred by Escrow Agent unless such dispute relates to the Escrow Agent's failure or refusal to maintain full insurance coverage under the FDIC as required herein.

5. Amendment. Any amendment to this Agreement shall be in writing and will require the written consent of all of the parties, which consent shall not be unreasonably withheld. Any dispute concerning amendment of this Agreement under this paragraph will be resolved as set forth in paragraph 4, above.

6. Counterparts. This Agreement and any amendments or extensions hereof may be executed in one or more counterparts and by the manual or facsimile signature of the parties hereto. Each of such counterparts, when so executed, will be deemed an original and when taken together will constitute a single instrument.

7. Further Assurances. The Parties hereto agree 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.

8. Effective Date and Termination. This Agreement shall become effective on the last date executed by any party hereto, or as to HCL and the Escrow Agent, upon the deposit of funds in the Restoration Account. Upon proper disbursement of all the Funds, agreement of the HCL, GRN, and the Land Trust, or order of the United States District Court for the Southern District of Mississippi or any court of competent jurisdiction, this Escrow Agreement shall terminate.

IN WITNESS of the foregoing provisions, the parties have caused this Escrow Agreement to be duly executed and delivered by authority duly given as of this, the 17<sup>th</sup> day of February, 2012.

**THE PEOPLES BANK,**  
a ~~Mississippi~~ corporation

By: 

Printed Name: Daniel A. Bass

Its: Asst. Vice President

**HANCOCK COUNTY LAND, LLC,**  
f/k/a Hancock County Development, LLC,  
an Alabama corporation


By: 

Printed Name: Charles H. Hoake

Its: Counsel



**GULF RESTORATION NETWORK,**  
a Louisiana not-for-profit corporation

By: 

Printed Name: Elizabeth Livingston de Calderon

Its: Council of Records

**LAND TRUST FOR THE MISSISSIPPI  
COASTAL PLAIN,** a Mississippi not-for-profit  
corporation

By:   
Judy Steckler, Executive Director



GRN and Hancock agree that each party shall be responsible for and bear its respective attorney's fees, expenses, and costs of this settlement subject to the relevant provisions of the Consent Judgment. In the event of any action or motion to enforce the terms of the Settlement Agreement, each party shall bear its own attorneys' fees and costs.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Gulf Restoration Network and Defendant, Hancock County Development, L.L.C. respectfully request this Honorable Court grant their Joint Motion to Dismiss this matter with prejudice effective one week after completion of the parties' attached settlement.

Respectfully submitted this \_\_\_\_ day of January, 2017.

HANCOCK COUNTY LAND, L.L.C.

BY: \_\_\_\_\_  
R. Mark Alexander, Jr.  
BALCH & BINGHAM LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501  
Telephone: (228) 864-9900  
Facsimile: (228) 864-8221  
malexander@balch.com  
*Attorneys for Defendant*

GULF RESTORATION NETWORK

BY: \_\_\_\_\_  
Elizabeth Livingston de Calderon  
Tulane Environmental Law Clinic  
6329 Freret Street  
New Orleans, LA 70118  
Telephone: (504) 862-8819  
Facsimile: (504) 862-8721  
E-mail: ecaldero@tulane.edu  
*Attorneys for Plaintiff*





REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, AL 36628-0001

May 25, 2012

Coastal Branch  
Regulatory Division

SUBJECT: Department of the Army Nationwide Permit Number SAM-2012-00415-DEM, Land Trust for the Mississippi Coastal Plain

Land Trust for the  
Mississippi Coastal Plain  
Attention: Ms. Judy Steckler  
Post Office Box 245  
Biloxi, Mississippi 39533

Dear Ms. Steckler:

This letter is in response to your application for a Department of the Army (DA) permit to perform restoration of prior wetland impacts along Highway 603, Bay St. Louis, Hancock County, Mississippi (Latitude 30.34708°, Longitude -89.43847°). The project involves filling construction ditches, restoring to historic natural grade and replanting with native vegetation. Your project has been assigned file number SAM-2012-00415-DEM, which should be referred to in future correspondence with this office regarding your project.

DA permit authorization is necessary because your project would involve the discharge of fill material into waters of the United States.

Based upon the information and plans you provided, we hereby verify the work described above, which would be performed in accordance with the enclosed drawings, is authorized by Nationwide Permit (NWP) 27, *Aquatic Habitat Restoration, Establishment, and Enhancement Activities* in accordance with 33 CFR Part 330 of our regulations. This NWP and its associated Regional and General Conditions can be viewed at our website at: [www.sam.usace.army.mil/rd/reg](http://www.sam.usace.army.mil/rd/reg). You must comply with all the general conditions and any project specific conditions of this authorization or you may be subject to enforcement action. In the event you have not completed construction of your project within the specified time limit, a separate application or verification may be required. This verification is valid for a period of **two years** from the date of this letter.



Settlement Agreement  
**EXHIBIT F**

The following project special conditions are included with this verification:

- a. You shall comply with all the terms and conditions of the Mississippi Department of Environmental Quality, Office of Pollution Control, Section 401 Certification and comply with certification from the Mississippi Department of Marine Resources.
- b. The permittee shall adhere to and fully implement the approved wetland restoration plan, *Ecological Restoration Plan, Hancock County Land LLC, Dedication Parcel Project*, dated January 19, 2012.
- c. Only suitable material free of waste, metal and organic trash, unsightly debris, etc., may be used as fill and material discharged must be free from toxic pollutants in toxic amounts.
- d. Best management practices shall be implemented to minimize erosion, siltation and damage to waters of the United States. Appropriate erosion and siltation control measures must be used and maintained in effective operating condition during construction. All temporary erosion control features shall remain in place until permanent stabilization measures have been completed and have become fully effective.
- e. If any evidence of the presence of Threatened/Endangered Species is found during the authorized work, activities in the immediate vicinity must cease and the permittee shall notify the U.S. Army Corps of Engineers (Corps), Mobile District.
- f. Should artifacts or archaeological features be encountered during project activities, work shall cease and the Mississippi Department of Archives and History and Mobile District shall be consulted immediately.
- g. It is the permittee's responsibility to ensure the contractor(s) working on this project are aware of all general and special conditions.

This verification is valid for a period of **two years** from the date of this letter. The statements contained herein do not convey any property rights or any exclusive privileges and does not authorize any injury to property or obviate the requirements to obtain other local, State or Federal assent required by law. Nothing in this letter shall be construed as excusing you from compliance with other Federal, State or local statutes, ordinances or regulations which may affect this work.

Please note, NWP General Condition 30 (*Compliance Certification*) requires every permittee who has received NWP verification must submit a signed certification regarding the commencement and completed work and any required mitigation. Enclosed are the forms you must complete and return to us to satisfy this requirement. **Such certifications must be provided within 5 days of initiation and completion of the authorized work.**

Please contact me at (251) 690-3185, if you have any questions. For additional information about our Regulatory Program, visit our web site at [www.sam.usace.army.mil/rd/reg](http://www.sam.usace.army.mil/rd/reg) and please take a moment to complete our customer satisfaction survey while you are there. Your responses are appreciated and will allow us to improve our services.

Sincerely,



Don Mroczko  
Coastal Branch  
Regulatory Division

Enclosures

When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)



**Enclosure 1**

**COMMENCEMENT CERTIFICATION**



**U.S. Army Corps of Engineers  
Mobile District**

Permit Number: **SAM-2012-0415-DEM**

Name of Permittee: **LAND TRUST FOR THE MISSISSIPPI COASTAL PLAIN**  
**POST OFFICE BOX 245**  
**BILOXI, MISSISSIPPI 39533**

Date of Issuance: **MAY 25, 2012**

Upon commencement of the activity authorized by this permit and any mitigation required by the permit, please sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Mobile District  
Regulatory Division  
Coastal Branch  
Post Office Box 2288  
Mobile, Alabama 36628-0001

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

I hereby certify that the work authorized by the above-referenced permit has commenced and shall be completed in accordance with the terms and conditions of the said permit, and the required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

**Enclosure 2**

**COMPLIANCE CERTIFICATION**



**U.S. Army Corps of Engineers  
Mobile District**

Permit Number: **SAM-2012-00415-DEM**

Name of Permittee: **LAND TRUST FOR THE MISSISSIPPI COASTAL PLAIN**  
**POST OFFICE BOX 245**  
**BILOXI, MISSISSIPPI 39533**

Date of Issuance: **MAY 25, 2012**

Upon completion of the activity authorized by this permit and any mitigation required by the permit, please sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Mobile District  
Regulatory Division  
Coastal Branch  
Post Office Box 2288  
Mobile, Alabama 36628-0001

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and the required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date