

OKA.

2017-0410

**INTRODUCED BY: LARRY COCHRAN, PARISH PRESIDENT
(DEPARTMENT OF WASTEWATER)**

ORDINANCE NO. 18-1-7

An ordinance to approve and authorize the execution of a First Amendment to Predial Servitude Agreement by and between Rathborne Land Co., LLC and St. Charles Parish for property adjacent to the Luling Oxidation Pond.

WHEREAS, St. Charles Parish entered into a Predial Servitude Agreement with Rathborne Land Co., LLC as approved and authorized by Ordinance 09-4-7 with an Effective Date of February 1, 2008 for a flowage easement for the purpose of discharging treated effluent from the Luling Oxidation Pond into the wetlands area per the Agreement; and,

WHEREAS, The Predial Servitude Agreement has expired on its face and St. Charles Parish is still in need of the flowage easement as outlined in the Agreement and Rathborne Land Co., LLC has agreed to extend the Agreement; and,

WHEREAS, Rathborne Land Co., LLC has agreed to amend the Predial Servitude Agreement pursuant to the attached First Amendment to Predial Servitude attached hereto; and,

WHEREAS, it is important that St. Charles Parish continue the Predial Servitude in order to protect the health, safety and welfare of its citizens.

THE ST. CHARLES PARISH COUNCIL HEREBY ORDAINS:

SECTION I. That the First Amendment to Predial Servitude Agreement as described as is hereby approved and accepted.

SECTION II. That the Parish President is hereby authorized to execute said First Amendment to Predial Servitude on behalf of St. Charles Parish.

The foregoing ordinance having been submitted to a vote, the vote thereon was as follows:

YEAS: BENEDETTO, HOGAN, WILSON, CLULEE, GIBBS, WOODRUFF,
 BELLOCK, FLETCHER, FISHER-PERRIER

NAYS: NONE

ABSENT: NONE

And the ordinance was declared adopted this 8th day of January, 2018, to become effective (5) days after publication in the Official Journal.

CHAIRMAN: [Signature]

SECRETARY: [Signature]

DLVD/PARISH PRESIDENT: [Signature]

APPROVED: _____ DISAPPROVED: _____

PARISH PRESIDENT: [Signature]

RETD/SECRETARY: [Signature]

AT: W Soa RECD BY: [Signature]

RECORDED IN THE ST. CHARLES PARISH
CLERK OF COURT OFFICE

ON January 29, 2018

AS ENTRY NO. 429972

IN MORTGAGE/CONVEYANCE BOOK

NO 857 FOLIO 336

FIRST AMENDMENT TO
PREDIAL SERVITUDE AGREEMENT

This First Amendment to Predial Servitude Agreement (the "First Amendment") is dated the 29 day of January, 2018 and is by and between:

RATHBORNE LAND COMPANY, L.L.C., a Louisiana limited liability company, whose mailing address is P.O. Box 157, Harvey, LA 70059 (hereinafter referred to as "Rathborne"), and

THE PARISH OF ST. CHARLES, a political subdivision of the State of Louisiana, represented here by its President, duly authorized (hereinafter referred to as the "Parish").

WHEREAS, Rathborne and Parish entered into a Predial Servitude Agreement, dated February 1, 2008, (the "Agreement") wherein Rathborne granted the Parish a servitude (the "Servitude") allowing the Parish the right to discharge treated effluent from the Luling Oxidation Pond Wetlands Assimilation Project (the "Project") over, through and across certain property (the "Property") of Rathborne, described on Exhibits "A" and "B" to the Agreement;

WHEREAS, it has recently been discovered that the effluent may be impacting other property of Rathborne, as reflected on Exhibit "C" annexed hereto (the "Impacted Areas");

WHEREAS, Rathborne and Parish have not agreed upon a purchase price for the fair market value of the Property subject to the Servitude granted by the Agreement (the "Purchase Price");

WHEREAS, the Parish has not paid to Rathborne any of the Purchase Price or other consideration for granting the Servitude and has requested Rathborne to extend the obligations of Parish under the Agreement, including its obligation to pay the Purchase Price to Rathborne for a twelve month period to expire on February 1, 2019, and the parties agree that any prescription that may have run is hereby interrupted and acknowledged by this First Amendment;

WHEREAS, Rathborne is agreeable to allow the extension in accordance with this First Amendment in order to forestall the necessity of litigation and/or arbitration;

NOW THEREFORE, Parish and Rathborne agree as follows:

1. Any liberative prescription on the obligations of Parish as provided in the Agreement which has commenced to run but has not accrued is hereby acknowledged and interrupted; and in particular, any obligation to pay the Purchase Price to Rathborne is expressly extended for a twelve month period to expire on February 1, 2019. The obligations of Parish as provided in the Agreement, include but are not limited to those in Section 6 c) of the Agreement, which provides that the Parish will pay the Purchase Price to Rathborne for the fair market value of the Servitude granted by the Agreement.

2. The Parties acknowledge that as of the date of this First Amendment, no portion of the Purchase Price has been paid to Rathborne, no wetlands mitigation credits or carbon credits arising out of the Project have been transferred to Rathborne, and no credits or reductions

to any impact fees or other assessments arising out of a project developed by Rathborne or its affiliates have been credited to Rathborne. The parties agree that once the fair market value Purchase Price of the Servitude has been determined and agreed to by the Parish and Rathborne, the Parish shall pay Rathborne on February 1, 2019, or such later date that the parties may agree, the Purchase Price in cash, *less* the fair market value, as agreed to by the Parish and Rathborne, of any transferable wetlands mitigation credits, transferable carbon credits, and/or credits against any impact fees or other assessments which may arise out of any other project developed by Rathborne, its affiliates or its designees, or any combination thereof (collectively the "Credits"). Before the Credits can be used to reduce the cash portion of the Purchase Price, both the Parish and Rathborne must agree to the fair market value of such Credits and agree to the form of the assignment of such Credits, free of any lien or privilege, upon terms and conditions acceptable to the Parish and Rathborne. The choice of which Credits to be used will be determined at the option of the Parish.

3. While the above section acknowledges and interrupts any liberative prescription accruing on the obligations of the Parish under the Agreement, including the obligation to pay the Purchase Price to Rathborne for an additional year, it does not affect or limit the rights of either Parish or Rathborne to invoke arbitration as provided by the Agreement if the parties are unable to arrive at an agreeable Purchase Price for the fair market value of the Servitude over the Property, as granted by the Agreement.

4. While the Agreement remains in full force and effect, Rathborne agrees that the Parish has the right to place monitoring gauges on the Property but not on any other property owned by Rathborne. The Parish agrees to obtain the prior written consent of Rathborne (which may include an increase of the Purchaser Price) for any other use of the Property beyond the scope of the original Servitude by the Parish or any related governmental agencies.

5. In the event it is determined that the Impacted Areas are affected by the effluent discharged from the Project, Parish agrees to use its best efforts to prevent the effluent discharge from affecting property beyond the Property subject to the Servitude.

6. The parties agree to update the Notices provisions in Section 13 and amend and restate it as follows:

13) **Notices.** All notices or other communications required or permitted to be given herein must be in writing and shall be considered given (i) on the date when delivered in person, (ii) one (1) business day after the date of deposit in Federal Express, Airborne, or any other national recognized overnight courier, (iii) three (3) days after the postmarked date of mailing, if mailed in the United States mail via registered or certified, postage prepaid, return receipt requested, or (iv) on the day sent if by telecommunications including email using portable document format (pdf), provided an original is received by the addressee by a method set out above or receipt is acknowledged by the addressee by email. Either party, may, by notice as herein provided, designate a different address as provided above to which its notices are to be sent or may specify additional parties to

whom copies of all such notices shall be sent. All notices shall include and be sent to such party's counsel.

If to St. Charles Parish

Larry Cochran, Parish President
15045 River Road
Hahnville, LA 70057
lcochran@stcharesgov.net

With copy to:
Robert Raymond
14108 River Road
P.O. Box 340
Destrehan, LA 70047
rraymond@robertraymondlaw.com

If to Rathborne

Gregory C. Lier
P.O. Box 157
Harvey, LA 70059
greglier@rathborne.com

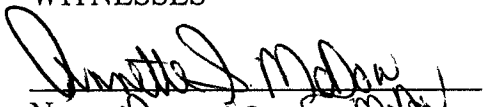
With copy to:
Frank A. Tessier
Carver Darden
1100 Poydras St., Suite 3100
New Orleans, LA 70163
tessier@carverdarden.com

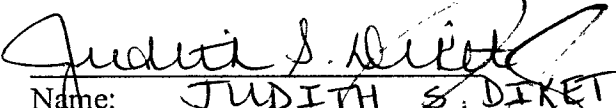
7. Other than as amended by this First Amendment, the Agreement is and remains in full force and effect, including but not limited to the obligation to pay the Purchase Price to Rathborne.

8. This First Amendment may be executed simultaneously in two or more identical counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Counterparts hereof and amendments hereto may be executed and delivered via facsimile or by email. The parties agree to recognize electronic signatures or pdf's of the executed Agreement.

THUS DONE AND PASSED, by Rathborne in multiple originals, on the 22nd day of January, 2018, in the Parish of Jefferson, State of Louisiana, in the presence of the undersigned competent witnesses, who have signed their names, together with appears and me, Notary.

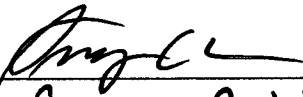
WITNESSES


Name: Annette S. Melon


Name: JUDITH S. DIKET

Notary Name: _____
Bar No./Notary No. _____

RATHBORNE LAND COMPANY, L.L.C.

By: 
Name: Gregory C. Lier
Its Manager

Beth Sheets
Notary Public
State of Louisiana
Notary No. 140752
My commission is for life.

THUS DONE AND PASSED, by Parish in multiple originals, on the 29th day of January, 2018, in the Parish of St. Charles, State of Louisiana, in the presence of the undersigned competent witnesses, who have signed their names, together with appears and me, Notary.

WITNESSES

Dawn H. Higdon
Name: DAWN H. HIGDON

Sara Fox
Name: SARA FOX

THE PARISH OF ST. CHARLES

By: [Signature]
Its President

Notary Name: Robert L. Raymond
Bar No./Notary No. 11408

SW Orleans 100K, LA; Scale: 1" = 0.901MI, AECOM 4.758FT, 1 MI = 1.110", 1 cm = 371MI

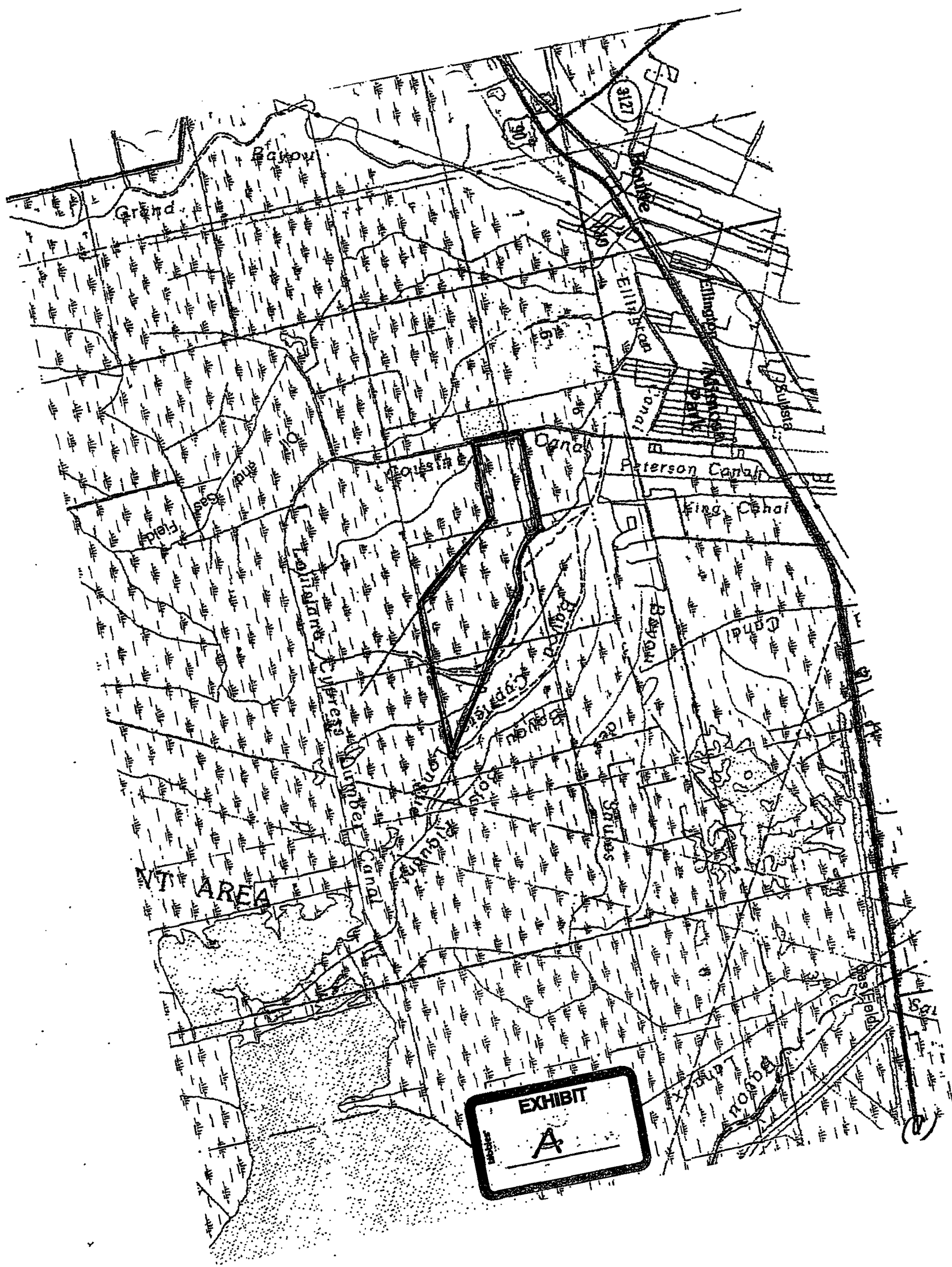
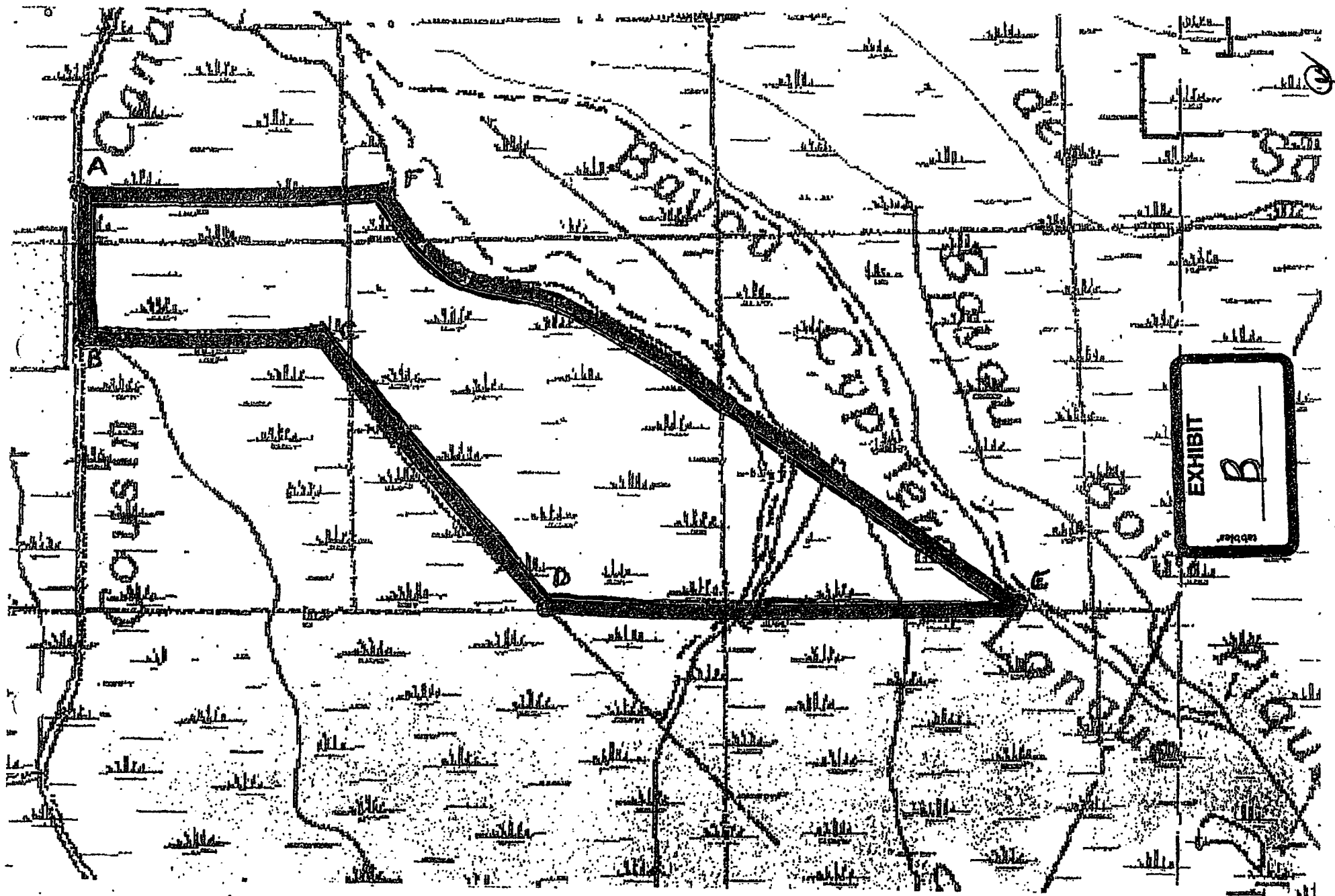


EXHIBIT
A



A= N 29°53.014,60' W90°21.479,38'

B= N 29°52.660,24' W90°21.495,04'

C= N 29°52.647,08' W90°20.839,22'

D= N 29°52.013,54' W90°20.234,60'

E= N 29°52.006,58' W90°18.941,55'

F= N 29°552.995,76' W90°20.678,56'

EXHIBIT
C



School Board
Property

Louisiana Cypress Lumber Canal

OUT/IDEQ

325 acres
believed to be
part of Davis
Pond Diversion

MID

Cousin Canal

LDCEQ
LDCEQ
LDCEQ

Sampling
Pond

EXHIBIT

C

Certificate of Certifying Official
as to
Authority of Managers
of
Rathborne Land Company, L.L.C.

Ginger T. Boudreaux, who is a certifying official and Secretary of **Rathborne Land Company, L.L.C.** (the "Company"), a Louisiana limited liability company, does hereby certify in accordance with the Articles of Organization and the Operating Agreement of the Company that any Manager of the Company is authorized to act on behalf of the Company to (I) borrow money and incur obligations on behalf of the Company, whether secured or unsecured, at such interest rates and on such terms and conditions as the Managers may deem proper, (ii) to execute checks, promissory notes, letters of credit, loan agreements and continuing guaranties on behalf of the Company, upon such terms and conditions as the Managers may deem proper, (iii) to sell, purchase, lease, assign, pledge, mortgage or grant security interests in or otherwise encumber any immovable or movable property of the Company and (iv) to execute and bind the Company on any mortgages, assignments, security agreements, pledges and any other documents creating any such encumbrance with such documents to contain the usual and customary security clauses, including without limitation a confession of judgment, waiver of appraisal and pac de non alienando, all upon such terms and conditions as the Managers may deem property. Any Manager is further authorized to execute any and all documents in furtherance of this authority and to receipt for the purchase price from any sale of such property, all upon such terms and conditions as such Manager may deem proper.

As a certifying official and Secretary of **Rathborne Land Company, L.L.C.**, I hereby certify that the foregoing is a true and correct copy of the authority granted to Managers of the Company, as duly and legally adopted by the Board of Directors of **Rathborne Land Company, L.L.C.** and that said authorizations have not been rescinded, modified or recalled, and are in full force and effect.

I further certify that **Gregory C. Lier** is the Executive Vice President and a Manager and Michael E. Jones is the Vice President and a Manager of the Company.

Witness my signature on this 22nd of January, 2018.


Ginger T. Boudreaux, Secretary

