



against the existence of the building and these special exceptions are raised to bring this fact to the Court's attention and seek a ruling denying Plaintiffs' request for a permanent injunction.

2. Plaintiffs and others involved in the Stop Ashby High Rise.org movement,<sup>1</sup> have made it clear that they are involved in an organized effort to stop the construction of the Project, not to protect the surrounding properties, as alleged in their Petitions. In other words, they are attempting to use this Court to impose private zoning over Defendants' use of its unrestricted property to erect a structure that is lawfully permitted and approved. Defendants urge these special exceptions to prevent further interference with the lawful efforts of Defendants to construct a lawful and fully permitted Project.

## **II. SPECIAL EXCEPTIONS**

3. Special Exception to Traffic Complaints. Paragraphs 21-24 and 35 of Plaintiff's Original Petition (the "Petition") and Paragraphs 24-27 and 41 of the Amended Petition contain traffic related allegations which: i) relate to public streets over which the Plaintiffs have no authority, and ii) are subject solely to the authority of the City of Houston. The traffic impact of the planned 1717 Bissonnet project ("Project") was fully addressed and resolved in Civil Action No. 4:10-CV-01736, Maryland Manor Associates, et. al. v. City of Houston, in the United States District Court for the Southern District of Texas, Houston Division, which was settled, and all City of Houston approvals for permits for access to the Project from public streets were thereafter issued.

4. Plaintiffs may not restrict or regulate the use of public streets. In fact, there is not a property right in the volume of traffic or visibility of property. *State v. Schmidt*, 867 S.W. 2d 769, 774 (Tex. 1993). Because Plaintiffs would be precluded from arguing these claims against

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<sup>1</sup> See [www.stopashbyhighrise.org](http://www.stopashbyhighrise.org).

the City, the jurisdictional public entity that has expressly allowed and permitted the Project, Plaintiffs' claims as pleaded in these paragraphs do not support a claim for a permanent injunction against the fully permitted construction of the Project. Further, even if Plaintiffs could establish a claim for nuisance, which Defendants strongly contest, the remedy would be monetary damages based upon the diminution in value of Plaintiffs' property. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

5. Special Exception to Light and Air Complaints. Defendants specially except to Paragraphs 25, 31, 34 and 35 of the Petition and to Paragraphs 28, 40 and 41 of the Amended Petition because the allegations regarding obstruction and inability to maintain light and air, even if true, do not state a cause of action as to a building otherwise permitted by private real property law, public land use regulations and governmental permitting requirements, and does not give rise to a cause of action for nuisance.

6. The rights governing adjoining property owners was stated in *Harrison v. Langlainais*, 312 S.W. 2d 286, 288 (Tex. Civ. App. – San Antonio 1958)

The rule of law in Texas is well established, that the owner of real estate may, in the absence of building restrictions or building regulations against his land, erect a building, wall, fence or other obstruction thereon and on any part thereof, within his sole discretion, and his action in so doing is lawful as one of the incidents of fee simple ownership, notwithstanding it obstructs light, air and vision from his neighbor; notwithstanding it depreciates the value of the neighbor's property, and notwithstanding the motive for erecting the structure. This has been the law, and it has been followed by an unbroken line of authorities, since the early case of *Klein v. Gehrung*, 25 Tex.Supp. 232; *Fort Worth & D. C. R. Co. v. Ayers*, Tex.Civ.App., 149 S.W. 1068; *Ex parte Maddox*, 123 Tex.Cr.R. 249, 58 S.W.2d

516; *Boys Town, Inc., v. Garrett*, Tex.Civ.App., 283 S.W.2d 416; *Dallas Land & Loan Co. v. Garrett*, Tex.Civ.App., 276 S.W. 471; *Woods v. Kiersky*, Tex.Civ.App., 297 S.W. 518; *Spann v. City of Dallas*, 111 Tex. 350, 235 S.W. 513; *Miller v. Dickinson*, Tex.Civ.App., 236 S.W. 1014.

7. Further, in dealing with an alleged nuisance based upon the existence of windmills, the Court in *Rankin v. FPL Energy, LLC*, 266 S.W.3d 506,511, (Tex. App. – Eastland 2008, pet. denied) stated:

We do not minimize the impact of FPL's wind farm by characterizing it as an emotional reaction. Unobstructed sunsets, panoramic landscapes, and starlit skies have inspired countless artists and authors and have brought great pleasure to those fortunate enough to live in scenic rural settings. The loss of this view has undoubtedly impacted Plaintiffs. A landowner's view, however, is largely defined by what his neighbors are utilizing their property for. Texas caselaw recognizes few restrictions on the lawful use of property. If Plaintiffs have the right to bring a nuisance action because a neighbor's lawful activity substantially interferes with their view, they have, in effect, the right to zone the surrounding property.

8. The Project is a structure that will be built on private, unrestricted property, has been fully permitted and complies with all governmental requirements. Even if Plaintiffs could establish a claim for nuisance, the remedy would only be monetary and would not support a temporary or permanent injunction.

9. Defendants request that the Court sustain this special exception and that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

10. Special Exception to Aesthetic Complaints. Defendants specially except to the allegations contained in Paragraphs 25, 28, 31, 34, and 35 of the Petition and to Paragraphs 28, 31, 40 and 41 of the Amended Petition because they are aesthetic complaints and emotional

reactions to the future existence of a building permitted under private real property law, public land use regulations and governmental permitting requirements, and which may not be considered by any fact finder in a nuisance action, nor give rise to a cause of action for nuisance. *Rankin v. FPL Energy, LLC* at 512-13.<sup>2</sup> Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

11. Special Exception to Request for Injunction Against the Project. Defendants specially except to any request for an injunction based upon Paragraphs 21 – 25 of the Petition and to Paragraphs 24 – 28 of the Amended Petition because an injunction (temporary or permanent) is not proper under Texas nuisance law to prevent a permanent nuisance-in-fact alleged to be the future existence of a building which is otherwise permitted by private real property law, public land use regulations and governmental permitting requirements. Plaintiffs' remedy is limited to monetary damages upon any finding that the future existence of an otherwise legally allowable building is a permanent nuisance-in-fact, simply. *Schneider Nat'l Carriers, Inc. v. Bates*, 147 S.W.3d 264, 284 (Tex. 2004).

12. In *Schneider Nat'l Carriers, Inc. v. Bates*, the Texas Supreme Court applied the following rule to nuisance law: **“a permanent injunction issues only if a party does not have an adequate legal remedy. If there is a legal remedy (normally monetary damages, then a party cannot get an injunction too.”** *Id.* at 284. In this case, were there to be a nuisance finding, which Defendants dispute, Plaintiffs would have an adequate legal remedy in the form

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<sup>2</sup> “Aesthetical impact either is or is not a substantial interference with the use and enjoyment of land. If a jury can consider aesthetics as a condition, then it can find nuisance because of aesthetics. Because Texas law does not provide a nuisance action for aesthetical impact, the trial court did not err by granting FPL's motion for partial summary judgment and by instructing the jury to exclude from its consideration the aesthetical impact of the wind farm. Issue One is overruled.”

of damages. Plaintiffs' only possible injuries alleged in their Amended Petition, which are not based on aesthetics or emotional reactions, are i) a threat of diminution in the value of their property and ii) possible foundation damage, each of which are entirely speculative but would be compensable. The Texas Supreme Court has articulated that diminution in value is the proper measure of damages for a permanent nuisance. Specifically, the Court stated:

If a nuisance is permanent, the owner may recover lost market value—a figure that reflects losses from the injury, including lost rents expected in the future.

*Id.* at 276.

13. Plaintiffs' claim for injunctive relief is a thinly veiled attempt for either i) private nuisance zoning, or ii) an implied easement or covenant of light and air, neither of which is recognized in Texas. Plaintiffs have no private real property rights to limit development of the Project. The City of Houston has no public land-use regulations to prevent development of the Project, and in fact, has issued approval for all required permits. Defendants request that the Court sustain this special exception and enter its order that the allegations in the cited Paragraphs, to the extent that they are not stricken in response to other special exceptions herein, are not to be considered in support of any request for injunctive relief and that any request for injunction to prevent the existence of the Project (as compared to conduct by Defendants in the construction of the Project) be stricken.

14. Special Exception to Construction Related Complaints as Speculative, Anticipatory and Not Ripe. Defendants specially except to the allegations contained in Paragraphs 26, 27, 29 and 35 of the Petition and to Paragraphs 29, 30, 38 and 41 of the Amended Petition because they are speculative, premature and not ripe for consideration by this Court. Not only are the alleged fears regarding the foundation of the Project premature, they contradict

the only evidence before this Court from anyone who has any demonstrable knowledge of the various soil issues involved in the construction of the Project foundation.

15. In a related case before this Court, *In Re Penelope Loughhead*, Petitioner Loughhead has already received the Affidavit of Woodward L. Vogt as Exhibit J to Morgan's Response (the "Vogt Affidavit").<sup>3</sup> In contrast to Plaintiffs' alleged fears and anxieties, Mr. Vogt establishes: (1) the general site excavation will be about the depth of the shallow end while the individual caps will be approximately equal to the deep end of a typical 8 foot deep residential swimming pool and the excavation will not be permanent, *see* ¶ 7 of the Vogt Affidavit; (2) groundwater will not be displaced in any sense by the volume of the pile foundations and the groundwater in question is not a source of potable water, *see* ¶ 8 of the Vogt Affidavit; (3) the augercast piles to be used on the Project, together with drilled (augured) piers are the two most common foundation types used for structures of this type and many if not most of the high-rise buildings recently completed or under construction in the Houston area are supported on augercast piles *see* ¶ 9 of the Vogt Affidavit; (4) because the process does not involve hammering as with "driven" piles, augercast piles create less disturbance where noise is a concern or where driven pile installation (driving) equipment may cause vibration-induced settlement of adjacent buildings *Id.*; and (5) from a noise perspective, both the auger and the group pump are driven by typical diesel engines only slightly larger than those used to construct residential pier foundations. *Id.*

16. Plaintiffs' allegations of unfounded and unsubstantiated fears do not support a premature nuisance claim when there has been no injury.

"Texas is a state where industry, and particularly energy-related industry, is openly abundant. If we were to allow a cause of action to persons who have not been harmed, in their land or body, by the lawful operation of an industry, but

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<sup>3</sup> The Vogt Affidavit and Mr. Vogt's CV are attached hereto as Exhibit A for the Court's reference.

who are afraid that one day they will be, we would be opening our courts to a potential torrent of litigation. Persons who are apprehensive that one day in the future an industrial accident will harm them or their property could sue for their apprehension alone. Yet, doubtlessly, almost every Texas resident has experienced such apprehension at one time or another. For us to allow this cause of action would lead to a vast number of lawsuits—lawsuits not filed by persons who have actually been physically injured. The potential for virtually unlimited litigation renders the allowance of this claim, which addresses a comparatively de minimis harm in the first place, contrary to public policy.

*Maranatha Temple, Inc. v. Enterprise Products Co.*, 893 S.W.2d 92, 100 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1994, writ denied).

17. Plaintiffs' claims alleged in the foregoing paragraphs are clearly premature and speculative and cannot be used to support a temporary or permanent injunction against Defendants to stop construction. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraphs be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

18. Special Exception to Tree Complaints. Defendants specially except to Paragraph 28 of the Petition and to Paragraph 31 of the Amended Petition because the trees in question are located on land which is legally owned by Defendant 1717 Bissonnet, LLC (record title owner of the land where the Project will be constructed). Under the well settled "strips and gores" doctrine, in Texas, when a deed conveys land abutting a public street, it passes title to the center of the right-of-way, even if the description in the deed omits the right-of-way boundary, unless a contrary conveyance is expressed in plain, unequivocal terms. To the extent anyone other than Defendant 1717 Bissonnet, LLC has rights to limit their removal of those trees, it is the City of Houston, which has already approved the permit for the removal of those trees. Defendants may not restrict the removal of any trees on Defendant 1717 Bissonnet, LLC's land or any trees



otherwise previously approved for removal by the jurisdictional public authority under any applicable cause of action, including nuisance. Further, the trees in question have been removed and this issue is moot. Defendants request that the Court sustain this special exception, that the allegations in the cited Paragraph be stricken or, alternatively, that Plaintiffs be required to amend the Petition within 15 days and that, if Plaintiffs fail or refuse to amend within that time, these paragraphs be stricken.

### **III.** **CONCLUSION**

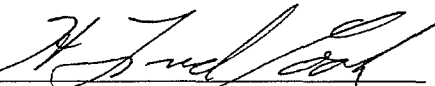
19. Plaintiffs' Amended Petition does not include any claims of allegations sufficient to support a permanent injunction against the construction of the Project. Plaintiffs have cobbled together: (1) vague complaints about traffic (over which they have no control), (2) light and air complaints (for which they have no cause of action under Texas law); (3) aesthetic complaints (for which they have no cause of action); (4) complaints regarding injunctive relief for a permanent nuisance against the future existence of a legally permitted Project (for which only monetary damages, if any can be proven, might be allowed); (5) construction related complaints which are speculative, anticipatory and not ripe; and (6) complaints about removal of trees which are on Defendants' property and for which Defendants have already received removal permission from the City of Houston. The allegations to date do not support any request for a permanent injunction against the Project and Defendants move for an Order striking Plaintiffs' request for a permanent injunction based upon the pleadings to date.

WHEREFORE, Defendants pray that the foregoing Special Exceptions set forth herein, as supplemented herein, be GRANTED, that the related claims and causes of action asserted in Plaintiff's

Amended Petition be stricken or denied with prejudice of re-filing of same, and that Defendants have such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

WILSON, CRIBBS & GOREN, P.C.

By: 

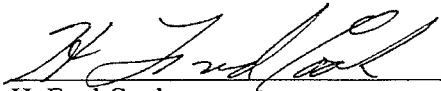
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Brandon Hedblom  
TBN: 24036746  
2500 Fannin Street  
Houston, Texas 77002  
Tel: 713-222-9000  
Fax: 713-229-8824

**ATTORNEYS FOR DEFENDANTS**

CERTIFICATE OF SERVICE

On this 5<sup>th</sup> day of June, 2013, a true and correct copy of the foregoing was forwarded to all counsel of record via certified mail, return receipt requested and/or via facsimile to the following:

Jean C. Frizzell  
Reynolds, Frizzell, Black, Doyle,  
Allen and Oldham LLP  
1100 Louisiana Street, 3500  
Houston, Texas 77002  
*Via Facsimile 713-485-7250*

  
H. Fred Cook

NO. 2013-02367

IN RE PENELOPE LOUGHHEAD,

*Petitioner*

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

157<sup>th</sup> JUDICIAL DISTRICT

**AFFIDAVIT OF WOODWARD L. VOGT**

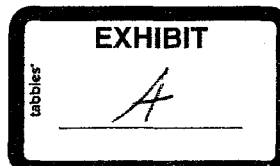
STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Woodward L. Vogt, who, being known to me and being by me duly sworn, deposed upon his oath as follows:

1. I am the President of Paradigm Consultants, Inc. an engineering firm in Houston, Harris County, Texas. I am over the age of twenty-one, have not been convicted of a felony and am duly qualified in all respects to make this Affidavit. The statements of fact contained herein are true and correct and within my personal knowledge as developed from my education, background and work on the Project.

2. In my work, I have more than 40 years experience encompassing geotechnical and materials engineering, construction materials inspection and testing, condition surveys and forensic investigations. I am a duly licensed professional engineer in Texas and Louisiana. I actively participate in several relevant national and international technical organizations including ACI International, ASTM International, the American Society of Civil Engineers, the American Association for Laboratory Accreditation, and the International Concrete Repair Institute. I was recently granted certification as Diplomat, Geotechnical Engineering (D.GE) by the Academy of Geo-Professionals as having demonstrated advanced knowledge, skills, and experience in the field



of geotechnical engineering. I am a frequent presenter at meetings and seminars and have authored or co-authored approximately 20 publications. I am a fellow of both ACI International and ASCE.

3. Paradigm Consultants, Inc. prepared the geotechnical engineering report specifying the design conditions and parameters for the foundations and earthwork used by the structural engineer in preparing the structural plans for the project located at 1717 Bissonnet (the "Project").

4. As a result of my experience with the Project, I have the following observations with respect to the Project and its various properties and aspects.

5. As regards excavation, according to the contractor's plans developed to installed the foundations, the temporary excavation for installation of the caps for the pile foundations will occur in two steps. Initially, the site will be excavated to a depth of 4 feet, the depth of the top of the foundation caps. This excavation will be sloped at 1 horizontal to 1 vertical back from the edges of the cap nearest the Project property line. Based on the current schedule, this excavation will be open about 3 weeks before being backfilled with compacted select fill soils. As the individual foundation caps are installed, individual excavations will be cut vertically to form the cap. These excavations will only be open 2 to 3 days for placement of the reinforcing steel and concrete.

6. The Project drawings show two foundation caps near the property line at 1736 Wroxton Court and these caps will be 7 feet from the property line. Upon initial excavation, the top of the slope to the 4 foot depth will be about 3 feet from the property line. The excavation for the two individual caps will extend an additional 3½ feet (total of 7½ feet) below existing grade with vertical sides. Again, the vertical cuts will be 7 feet from the property line.

7. To put the size of these excavations into perspective, the general site excavation will be about the depth of the shallow end while the individual caps will be approximately equal to the deep end of a typical 8 foot deep residential swimming pool; however, neither excavation will be

permanent. Additionally, Section V: Chapter 2 of the OSHA Technical Manual, provided to assist users of the Code of Federal Regulations 29CFR 1926, Subpart P *Excavations* (OSHA), allows slopes with a height-to-depth ratio of 1:1 (1 horizontal to 1 vertical) for Type B soils for excavation depths up to 12 feet. The near-surface soils at the project site are Type B or stronger. Thus, the proposed initial excavation, because it will likely be open for several weeks, must comply with the OSHA requirement but will be only 1/3 the maximum depth OSHA allows for a 1:1 slope. None of the excavations for the foundations are expected to negatively impact surrounding property.

8. As regards groundwater, near-surface groundwater was encountered during geotechnical exploration at depths of about 20 to 30 feet below the ground surface. When the augercast piles are formed, the auger will penetrate (drill into) the water-bearing soils. Then as the auger and soil are withdrawn, a cement-based high-strength grout (concrete) will be pumped into the augered hole (excavation) filling the hole to the surface. Using this type of foundation and installation process, the new concrete piles only occupy the volume of soils removed by the auger. Thus, the groundwater is not "displaced" in any sense by the volume of the pile foundations. Further, this shallow groundwater is not a source of potable water.

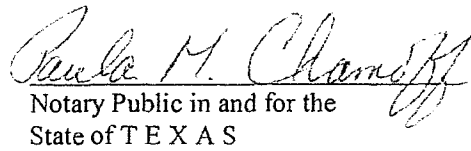
9. Augercast piles, which will be used in this Project, along with drilled (augered) piers, are the two most common foundation types used for structures of this type and many if not most of the high-rise buildings recently completed or under construction in the Houston area are supported on augercast piles. Because the installation process does not involve hammering as with "driven" piles, augercast piles create less disturbance where noise is a concern or where driven pile installation (driving) equipment may cause vibration-induced settlement of adjacent buildings. The installation is analogous to drilling a hole in a piece of wood and then filling the hole with strong glue except that the augercast pile holes will be 18 in. in diameter and filled with concrete-like grout.

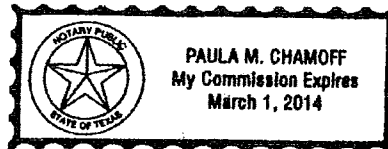
Many of the piles will extend to a depth near 100 feet. From a noise perspective, both the auger and the grout pump are driven by typical diesel engines only slightly larger than those used to construct residential pier foundations.

10. Further Affiant sayeth not.

  
WOODWARD L. VOGT

SWORN TO AND SUBSCRIBED BEFORE ME, on this 5<sup>th</sup> day of February, 2013.

  
Notary Public in and for the  
State of T E X A S



# Paradigm Consultants, Inc.

**Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE**

**SPECIALIZATION:** Geotechnical engineering, materials science and mechanics of soils, rock, and construction materials. Consultant on nondestructive examination and testing of concrete and other construction materials; condition surveys and forensic investigation of construction failure, distress, damage, and degradation; repair and restoration methods and materials; and construction quality assurance.

Consultant, chief investigator, senior consultant, project engineer, and project manager for structures and pavements that have been damaged by fire, explosions, atmospheric exposure, abuse, and natural causes. Conducted condition surveys and forensic investigations, has prepared remedial design drawings and specifications, and has monitored and reviewed rehabilitation construction activities.

**EDUCATION:** M.S. Structural Engineering and Soil Mechanics: Georgia Institute of Technology, 1973

Rensselaer Polytechnic Institute (RPI) Graduate Division, Graduate Study, Metallurgy, 1970 - 1971

B.S. Engineering Mechanics: Georgia Institute of Technology, 1969

**REGISTRATION:** Professional Engineer: Texas (1977 - No. 42157), Louisiana (1979 - No. 18410)

**PROFESSIONAL HISTORY:**

Paradigm Consultants, Inc., Houston, Texas, 1995 to present

McBride-Ratcliff and Associates, Inc., Houston, Texas, 1981 - 1995

Southwestern Laboratories, Inc., Houston, Texas, 1975 - 1981

Law Engineering Testing Company, Atlanta, Georgia, 1973 - 1975

Pratt & Whitney Aircraft, E. Hartford, Connecticut 1969 - 1971

NASA Johnson Space Center, Houston, Texas, 1965 - 1969

**REPRESENTATIVE PROJECTS:**

Geotechnical and construction materials consultant for: Peachtree Center Hotel, Hyatt Regency Hotel, OMNI International and Atlanta International Airport, Atlanta, Georgia; 1,300-foot earth-filled dam and 5,000-foot private runway near Smithville, Texas; taxiway bridges, Houston Intercontinental Airport; wastewater system expansion, Brownsville, Texas; Elysian Street Viaduct Rehabilitation; propane/polypropylene plant, Mt. Belvieu, Texas; Sugar Land Marriott Hotel and Conference Center, Sugar Land, Texas; Texas Commerce Tower; 69th Street Wastewater Treatment Complex; Greenspoint Office Complex; One Westchase Center; Compaq Center West, Houston, Texas; Southeast Water Purification Plant, Houston, Texas; Del Lago Convention Center and Marina, Lake Conroe, Texas; South Shore Harbour Marina, Preview Center, Golf Clubhouse, Hotel and Conference Center,



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## Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE

Physical Science Center and paving Waterford Harbor Marina, League City, Texas; Shell Norco Coker Replacement Project, Norco, Louisiana; numerous retail and commercial structures and residences throughout the Gulf Coast.

Performed testing and inspection and engineering evaluation of concrete structural elements - piers, piles, footings, slabs, mats, columns, walls, pavements, runways, pipes, precast and prestressed members; asphalt pavements - roads, runways, taxiways, parking lots; retaining structures and excavations - walls, bulkheads, dams, levees, clearwells, lift stations, basements, waste disposal cells, drainage canals, utility trenches; earthwork - fill control, compaction, stabilization, proof-rolling, undercutting; steel and non-ferrous metals structural elements, connections, fixtures and vessels; roofing systems and materials; paint and coatings; metallic and non-metallic fabrics; electrical and mechanical parts and components.

### Phillips Petroleum Refinery, Deer Park, Texas

Performed a condition survey including a variety of investigative techniques to determine the extent of damage and the rehabilitation requirements for a cooling tower basin following a devastating explosion and fire. The concrete structure sustained damage from exposure to fire and thermal shock. The extent of damage was determined and recommendations for remedial design were prepared. Repair materials, techniques, and repair specifications were provided.

### Mobil Beaumont Expansion Project, Beaumont, Texas

Performed a condition survey of a 20-year old reinforced concrete condenser support structure suffering from advanced corrosion of the reinforcement. Exposure to the Gulf Coast atmosphere combined with extreme differential temperature and poor design details caused premature deterioration of the structure. Minimum rehabilitative measures were recommended and design and specification details were provided to extend the life of the structure by 5 years.

### Bay City Pump Station, Bay City, Texas

Performed a condition survey of the 40+ year old reinforced concrete structure following collapse of a section of the concrete roof. A variety of destructive and nondestructive inspection and testing methods were employed to determine the cause and extent of corrosion damage in the structure. Provided recommendations for rehabilitation of the structure including materials and repair methods and applicable specifications.

### Elysian Street Viaduct, Houston, Texas

Performed a condition survey of the 1.2-mile long elevated roadway and bridge system concentrating primarily on the condition of the full-penetration welds of the large built-up girder sections. Directed the 10-month long nondestructive examination effort using ultrasonic methods to evaluate the acceptability of the welding to the current AWS Code requirements. Provided detailed data including drawings to show and describe defects and recommendations on repair.

# Paradigm Consultants, Inc.

**Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE**

Transit Shed/Storage Warehouse, Port of Houston, Texas

Performed a condition survey of the 1.2 mile long elevated, dockside concrete floor slab to determine the cause and extent of delamination of and the distress in the slab. Using destructive and nondestructive inspection and testing methods, the cause of the delamination and distress was found to be corrosion of the reinforcing steel in the slab caused by ingress of chlorides from hide storage. Demolition and repair materials and techniques were provided to the engineers for remedial design.

Mobil Refinery, Beaumont, Texas

Performed a condition survey of existing timber pile and concrete cap foundation system to determine the suitability of the system for use under a new structure. Core samples of the timber piles and concrete cap were examined for evidence of deterioration. No evidence of deterioration was found and reuse of the foundation system was recommended.

St. Mary's Parking Garage, Galveston, Texas

Performed a forensic investigation on a cast-in-place parking garage to determine the cause of spalling and popouts on level of the four-story structure. Petrographic analysis and X-ray diffraction techniques were used on cores from the structure to identify contaminated aggregates.

Storm Water Lift Station, Sunoco Refinery, Toledo, Ohio

Performed an evaluation of extensive fire damage to a new cast-in-place, reinforced concrete lift station after a fire fueled by hydrocarbons. Cores from the concrete walls of the lift station were evaluated petrographically to determine extent of damage. Tensile tests of reinforcing steel were performed to evaluate damage to reinforcement. Recommendations and specifications were provided for repair of the structure.

1100 Smith Parking Garage, Houston, Texas

Performed coring and used magnetic induction scanning, ultrasonic pulse velocity, and impact echo to determine material characteristics and dimensions of structural concrete members in the 11-story structure to determine feasibility of a 2-story addition.

AFFILIATIONS:

ACI International  
ASTM International  
Academy of Geo-Professionals  
American Society of Civil Engineers  
ASFE /The Geoprofessional Business Association  
Chi Epsilon Honor Society  
Construction Specifications Institute  
International Concrete Repair Institute  
National Society of Professional Engineers  
Texas Council of Engineering Laboratories  
Texas Society of Professional Engineers

## Paradigm Consultants, Inc.

**Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE**

### HONORS & POSITIONS:

Fellow of the American Society of Civil Engineers

Fellow of the American Concrete Institute

Diplomate, Geotechnical Engineer, of The Academy of Geo-Professionals

Board Chair, American Association for Laboratory Accreditation (A2LA), 2009-2012; Director, 2002 - 2008.

Vice President, International Council on Certification of Construction Inspectors (IC3I), 2012.

Chair, WACEL-TCEL Soils I Certification – Examination Development Task Force, 2009, WACEL Shallow Foundation Certification Task Force.

Director, ASFE, 2011-2012; Vice Chair, ASFE Construction Materials Engineering and Testing Committee, 2010 – 2011; Chair, ASFE Accreditation and Certification Task Force, 2007-2010.

Secretary/Treasurer, TCEL/Geoprosessionals Serving Texas, 2012; Director, 1997-2000, 2010 – 2012.

President, Houston Chapter, TCEL, 2012-2013; Vice President 2009-2010; Secretary/Treasurer, 2007-2008.

Chair, ASTM E36 Accreditation & Certification, 2012-2014; Chair, ASTM E36.20 Certification/Registration Bodies, 2009-2011.

Co-founder and Director, International Concrete Repair Institute - Houston Chapter, 1991-1994.

Recipient, ACI L. Blake Fentress Leadership Award, 1989.

Past President and Director American Concrete Institute - Houston Chapter, 1988.

Past Member, City of Houston Specification Task Force.

Past Member, Harris County Pavement Task Force.

Past Vice-Chairman, Houston Contractors Association Engineering and Testing Committee.

Past Secretary, ASCE Texas Section Materials Engineering Division.

Member, ACI Committee 121, Quality Assurance Systems for Concrete; Committee 132, Responsibility in Concrete Construction; Committee 211,

## Paradigm Consultants, Inc.

Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE

Proportioning Concrete Mixtures; Committee 214, Evaluation of Strength of Concrete; Committee 228, Nondestructive Testing of Concrete; Committee 311, Inspection of Concrete; Hot Topics Committee; Committee on Responsibility in Concrete Construction.

Member, ASTM Committee C09 on Concrete and Concrete Aggregates, Committee E06 on Performance of Buildings, Committee E36 on Accreditation and Certification, and Committee E58 on Forensic Engineering.

### PUBLICATIONS:

Co-author, "In-situ pullout strength of concrete with inserts embedded by finger placing", presented at the "International Conference on In-Situ/Nondestructive Testing of Concrete", Ottawa, Canada, October 1984, and published in In-Situ/Nondestructive Testing of Concrete, V.M. Malhotra/Editor, ACI Publication SP-82, American Concrete Institute, Farmington Hills, MI, 1984.

Co-author, "Analysis of Maturity/Pullout Testing Data", presented at the American Concrete Institute Spring Convention, Denver, Colorado, March 1985, and published in Computer Use for Statistical Analysis of Concrete Test Data, P. Balaguru and V. Ramakrishnan, Editors, ACI Publication SP-101, American Concrete Institute, Farmington Hills, Michigan 1987.

Co-author, "Integration of Time-Temperature Curing Histories with PC Spreadsheet Software", presented at the American Concrete Institute Fall Convention, Baltimore, Maryland, November 1986. Published by the American Concrete Institute, ACI Materials Journal, Title No. 85-M42, September/October 1988.

Co-author, "Statistical Evaluation of Flexural Strengths Using Spreadsheet, Database and Graphics Features of PC Software," presented at the American Concrete Institute Spring Convention, San Antonio, Texas, March 1987.

Co-author, "Application of Spreadsheet Software to Ensure Durable Concrete", presented at the Katharine and Bryant Mather International Conference on Concrete Durability in Atlanta, Georgia, April 1987, and published in Concrete Durability, John M. Scanlon/Editor, ACI Publication SP-100, American Concrete Institute, Farmington Hills, MI 1987.

Co-author, "Inattention to Minor Design and Construction Details Can Lead to Major Structural Problems - A Case Study," presented at the American Society of Civil Engineers Texas Section Spring Convention, Ft. Worth, Texas, April 1987.

Co-author, "Recent Improvements in High Resolution Ground Penetrating Radar for Subsurface Pavement Assessment," presented at the American Society of Civil Engineers Texas Section Spring Convention, Ft. Worth, Texas, April 1987, and selected "Best of Session." Published in Texas Civil Engineer.

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### Woodward L. Vogt, P.E., D. GE, F. ACI, F. ASCE

Co-author, "Pullout Test, Maturity, and PC Spreadsheet Software", presented at the American Concrete Institute Fall Convention, November 1987, and published in Nondestructive Testing, H.S. Lew/Editor, ACI Publication SP-112, American Concrete Institute, Farmington Hills, Michigan 1988.

Co-author, "Analysis of Concrete Strength for Quality Control Using PC Database Software," presented at the American Concrete Institute Annual Convention, Atlanta, Georgia, February 1989.

Author, "Are We Still Using Too Much Cement?" presented at the American Society of Civil Engineers Texas Section Fall Convention, El Paso, Texas, October 1990.

Co-author, "Degradation of Concrete in Sanitary Sewer Applications," presented at the American Society of Civil Engineers Texas Section Fall Convention, Houston, Texas, October 1992.

Co-author, "Investigating the Cause of Deterioration of a Concrete Structure on the Texas Gulf Coast," presented at the Third International Conference on Structural Engineering Analysis and Modeling, University of Science and Technology, Kumasi, Ghana, July 1993, and published in the conference proceedings.

Co-author, "Statistical Methods for Evaluating Core Strength Results," presented at the American Concrete Institute Fall Convention, Dallas, Texas, November 1991, and published in the ACI Robert E. Philleo Symposium Volume on Concrete Technology, T.C. Liu and George C. Hoff/Editors, ACI Publication SP-141, American Concrete Institute, Farmington Hills, Michigan 1993.

Co-author, "Investigating the Cause of Deterioration of a Concrete Structure on the Texas Gulf Coast," presented at the Third International Conference on Structural Engineering Analysis and Modeling, University of Science and Technology, Kumasi, Ghana, July 1993, and published in the conference proceedings.

Co-author, "Analytical Methods Used in Evaluating Fire-Damaged Concrete," presented at the 1994 Annual Conference of the American Academy of Forensic Sciences, held in San Antonio, Texas, February 1994.

Co-author, "Determination of Silica Fume in Dry Cement Matrix and Hydrated Mortar," presented at the ASTM Symposium on the Determination of the Chemical and Mineral Admixture Content of Hardened Concrete, Montreal, Quebec, Canada, June 1994. Published, in June 1995, *Cement, Concrete and Aggregates*, ASTM, Philadelphia, PA.

Co-author, "Microstructural Techniques Used in Condition Survey," *Concrete Repair Bulletin*, July/August 1995, International Concrete Repair Institute, Sterling, VA.

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Co-author, "Microstructural Techniques Used in Condition Survey," *Concrete Repair Bulletin*, July/August 1995, International Concrete Repair Institute, Sterling, VA.

Co-author, "Alkali Silica Reaction Under Highly Unusual Circumstances," presented at the *International Cement Microscopy Conference* held in Houston, Texas, April 1996.

Co-presenter, "Avoiding Flooring Failures on Concrete Slabs," presented for Houston Chapter Associated General Contractors, July 24, 2002.

Co-author, "Analysis of Four Axial Compression Load Tests on High Capacity Augered Cast-in-Place Piles in the Texas Gulf Coast Soils," presented to the 1<sup>st</sup> International Conference New Developments in Geoenvironmental and Geotechnical Engineering, November 9-11, 2006, at the Incheon Regional Environmental Technology Development Center, University of Incheon, Republic of Korea, and published in *Proceedings of the Conference*.

"Accreditation of Testing and Inspection Agencies and Certification of Testing and Inspection Personnel in Construction Materials," presented to the ASFE Fall General Meeting, Philadelphia, PA, October 2007.

Co-presenter, "The Accreditation/Certification Maze," presented to the Quarterly Meeting of the Northwest Council of Engineering Laboratories, Lynnwood, WA, February 21, 2008.

"QA & QC: A 3-year Old's Perspective," presented to the meeting of the ASFE Construction Materials Engineering and Testing Committee, ASFE Fall Meeting, San Francisco, CA, October 2008, and ACI Fall 2009 Convention, Quality management Systems for Concrete Construction Session, New Orleans, LA, November 2009.

Co-moderator "Designing to Minimize Pavement Cracking," Hot Topic Session, ACI Spring 2009 Convention, San Antonio, Texas, and presenter of "The Paving Designer's Responsibilities to Minimizing Cracking."

Author and presenter, "CoMET Services vs. Construction Means and Methods and Scope of Service," TCEL 2011 Annual Winter Meeting, Austin, Texas.

Author and presenter, "Faux Pas in Coring," ACI International 2011 Spring Convention Program, "Getting to the Core of Coring," Tampa, Florida.

Moderator, "ASTM and the Geoprofessional," ASFE/The Geoprofessional Business Organization 2011 Spring Meeting, St. Louis, Missouri.

Author and presenter, "Defects in Construction: Investigation Using the Scientific Method," presented to the Forensic Examination Advisory Committee of the American Association for Laboratory Accreditation, 2011 Technical Forum and Annual Meeting, Columbia, Maryland.

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Co-author, "Nondestructive Evaluation of Externally Bonded Fiber-Reinforced Polymer Systems to Concrete Structures," *Concrete Repair Bulletin*, International Concrete Repair Institute, September/October 2011.