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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	14 Civ. 1888 (NSR)
	:	
-against-	:	<u>NOTICE OF LODGING OF</u>
	:	<u>PROPOSED CONSENT DECREE</u>
	:	
TOWN OF RAMAPO, NEW YORK,	:	
	:	
Defendant.	:	
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The United States of America is hereby lodging with the Court the attached proposed Consent Decree (the "Consent Decree"). The United States respectfully requests that the Court not enter the Consent Decree at this time. Rather, pursuant to 28 C.F.R. § 50.7, notice of the lodging of the Consent Decree will be published in the Federal Register, following which the United States Department of Justice will accept public comments on the Consent Decree for a 30-day period. The Consent Decree will be available during this comment period at http://www.usdoj.gov/enrd/Consent_Decrees.html.

After the conclusion of the public comment period, the United States will file with the Court any comments received, as well as responses to the comments, and at that time, if appropriate, will request that the Court approve and enter the Consent Decree.

Dated: New York, New York
March 18, 2014

PREET BHARARA
United States Attorney for the
Southern District of New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA,

Plaintiff,

-against-

TOWN OF RAMAPO, NEW YORK,

Defendant.

----- X

CONSENT DECREE

14 Civ. 1888 (NSR)

WHEREAS, Plaintiff, the United States of America (the “United States”), on behalf of the United States Army Corps of Engineers (the “Corps of Engineers”), has filed a Complaint against Defendant, the Town of Ramapo, New York (the “Town” or the “Defendant”), alleging that the Town has violated and continues to violate one or more conditions or limitations of Department of the Army Permit Authorization No. 2010-00296 (the “Permit”), Sections 301(a) and 404 of the Clean Water Act (the “CWA”), 33 U.S.C. §§ 1311(a) and 1344;

WHEREAS, the Complaint requests that the Court award injunctive relief and civil penalties;

WHEREAS, the Parties agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the claims asserted by the United States under the CWA against Defendant as specifically set forth in the Complaint; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the claims asserted by the United States under the CWA against Defendant as specifically set forth in the Complaint, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law;

NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE.

1. This Court has jurisdiction over the subject matter of this action and over the Parties to this Consent Decree pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 404(s) of the CWA, 33 U.S.C. § 1444(s).

2. Venue is proper in this District pursuant to Section 404(s) of the CWA, 33 U.S.C. § 1344(s), and 28 U.S.C. §§ 1391(b) and (c) and 1395, because the Town is located in this District and the events giving rise to the claims in the Complaint arose in this District.

3. For purposes of this Consent Decree, or any action or proceeding to enforce this Consent Decree, Defendant consents to venue in the Southern District of New York and to this Court's jurisdiction over this Consent Decree, over any such action or proceeding, and over Defendant.

4. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims against Defendant upon which relief may be granted.

II. ADMISSIONS

5. Defendant admits and accepts responsibility for the following:

- a. The Permit required the Town to, among other things: (a) establish approximately 1.88 acres of wetlands at its project Site as compensatory mitigation for the loss of wetlands that are waters of the United States from the Town's unpermitted discharge of fill material in 2010; (b) provide the Corps of Engineers with annual monitoring reports on the

status of the compensatory mitigation activities at the Site beginning October 15, 2011; and (c) secure a conservation easement on the mitigation site to guarantee its preservation for wetland and wildlife resources, with the easement to be executed and recorded by June 14, 2011.

- b. The Town has failed to comply with all of these conditions of the Permit.
- c. At some point after applying for the Permit, the Town illegally discharged fill material without a permit into approximately 0.13 additional acres of wetlands that are waters of the United States.
- d. As a result, the Town is, and since at least June 14, 2011, has been, in violation of the Permit and the CWA.

III. APPLICABILITY

6. The obligations of this Consent Decree apply to and are binding upon the United States and the Town, and the Town's officers, directors, agents, employees and servants, and their successors and assigns, and any person, firm, association, or corporation who is, or will be, acting in concert or participation with the Town, whether or not such person or entity has notice of this Consent Decree.

7. Neither the Town's prior transfer of ownership of the fee interest in the Site to the Ramapo Local Development Corporation (the "LDC"), nor any future transfer of ownership or any other interest in the Site or any portion thereof, shall alter or relieve the Town of its obligation to comply with all of the terms of this Consent Decree. At least thirty Days prior to any future transfer of any interest in the Site or any portion thereof, the Town shall provide

written notice and a true copy of this Consent Decree to the successors in interest and shall simultaneously notify the Corps of Engineers and the United States at the addresses specified in Section XIII below that such notice has been given. The Town shall ensure that the LDC reserves, as a condition of any such transfer of ownership, all rights necessary to comply with the terms of this Consent Decree. In the event that the LDC transfers its interest in the Site without such a reservation, such transfer will be deemed a breach of this Consent Decree by the Town.

8. The Town shall provide a copy of this Consent Decree to all officers, directors, agents, employees and servants, and their successors and assigns, and any person, firm, association or corporation who is, or will be, acting in concert or participation with the Town, whose duties might reasonably include compliance with any provision of this Consent Decree, including any contractor retained to perform work required under this Consent Decree. Each contract with any contractor retained to perform work required under this Consent Decree shall provide that the work shall be performed in accordance with terms of this Consent Decree.

9. In any action to enforce this Consent Decree, the Town shall not raise as a defense the failure of any of its officers, directors, agents, employees and servants, or their successors and assigns, or the LDC, or any person, firm, association or corporation who is, or will be, acting in concert or participation with the Town, or the LDC, to take any actions necessary to comply with the provisions hereof.

IV. DEFINITIONS

10. Unless otherwise defined herein, terms used in this Consent Decree shall have the meanings provided in the CWA or in regulations promulgated pursuant to the CWA. The following definitions apply for the purposes of this Consent Decree:

- a. "Complaint" shall mean the complaint filed by the United States in this action.
- b. "Consent Decree" shall mean this Consent Decree; all Appendices attached hereto (and listed in Section XXIII of this Consent Decree); all Deliverables (approved by the Corps of Engineers in accordance with Section XIV of this Consent Decree); and all modifications (made effective in accordance with Section XVII of this Consent Decree).
- c. "Corps of Engineers" shall mean the United States Army Corps of Engineers and any of its successor or subordinate departments or agencies.
- d. "CWA" shall mean the Clean Water Act, 33 U.S.C. §§ 1251-1387.
- e. "Date of Lodging" shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the Southern District of New York.
- f. "Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- g. "Defendant" shall mean the Town of Ramapo, New York, and any of its successors or assigns.
- h. "Deliverable" shall mean any report, deed of conservation easement, or other document that is submitted to the Corps of Engineers for its review and approval pursuant to this Consent Decree.
- i. "Documents" shall be defined in accordance with Local Civil Rule 26.3 of the Local Rules of the United States District Court for the Southern District of New York.
- j. "Effective Date" shall have the definition provided in Section XV.
- k. "LDC" shall mean the Ramapo Local Development Corporation, and its successors or assigns.
- l. "Mitigation Parcels" shall mean those parcels of land within the Site that are to be established, restored, enhanced or preserved as wetlands or wetland buffer zones pursuant to the provisions of Section VII. Those parcels of land shall be described more particularly in the conservation easement recorded pursuant to Paragraph 22 of this Consent Decree.

Appendix B to this Consent Decree is a large-scale sketch depicting, among other things, the Mitigation Parcels.

- m. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.
- n. "Parties" shall mean the United States and the Town.
- o. "Permit" shall mean Department of the Army Permit Authorization No. 2010-00296, a letter from Stacey M. Jensen, Chief, Eastern Permits Section, Corps of Engineers, to Christopher P. St. Lawrence, Town Supervisor, Town of Ramapo, dated April 14, 2011.
- p. "Section" shall mean, except when citing a provision of the CWA, a portion of this Consent Decree identified by a Roman numeral.
- q. "Site" shall mean the tract of real property located at Firemans Memorial Drive, within the Village of Pomona, Town of Ramapo, County of Rockland, State of New York, which includes approximately 1.11 acres of wetlands into which the Town discharged fill material in 2010, approximately 0.13 acres of wetlands into which the Town discharged fill material after January 2011, and the approximately 2.2 acres of land that will be established as wetlands pursuant to the provisions of Section VII of this Consent Decree.

V. GENERAL PROVISIONS

11. This Consent Decree resolves the claims of the United States for the violations of the CWA alleged in the Complaint through the Date of Lodging.

12. It is the express purpose of the Parties in entering this Consent Decree to further the objectives set forth in Section 101 of the CWA, 33 U.S.C. § 1251, and the Permit. Appendix A to this Consent Decree is a copy of the Permit. All compensatory mitigation, monitoring, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendant to achieve and maintain full compliance with, and to further the purposes of, the CWA.

13. This Consent Decree is not, and shall not be interpreted to be, a permit, or modification of any existing permit, issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, or any other law, except that entry of this Consent Decree shall have the effect of modifying special conditions (b), (c) and (e) of the Permit to conform them to Section VII of this Consent Decree. Nothing in this Consent Decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the United States Environmental Protection Agency's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

14. This Consent Decree in no way affects or relieves the Town of its responsibility to comply with any applicable federal, state, or local law, regulation or permit. Except as expressly specified in Paragraph 11 of this Consent Decree, by consenting to the entry of this Consent Decree, the United States does not warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with any provision of the CWA or its implementing regulations.

15. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

16. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under

the CWA or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 11 of this Consent Decree. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or caused by, Defendant's activities at the Site, whether related to the violations addressed in this Consent Decree or otherwise.

17. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, other appropriate relief relating to the Site or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 11.

VI. CIVIL PENALTY

18. Within three Days of the Effective Date, Defendant shall pay the sum of \$125,000 as a civil penalty, together with interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to the Town, following lodging of this Consent Decree, by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of New York. At the time of payment, Defendant shall send a copy of the EFT authorization form and EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant

to the Consent Decree in *United States of America v. Town of Ramapo*, and shall reference the civil action number and the U.S. Attorney's Office case number (2013V00629), to the United States in accordance with Section XIII.

19. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section VIII) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21, and are not tax deductible expenditures for purposes of federal law.

VII. INJUNCTIVE RELIEF

20. Perform Work on the Mitigation Parcels: The Town shall complete all work on the Mitigation Parcels under the terms stated in Appendix B, which is appended hereto and incorporated herein by reference. The document appended hereto as Appendix B was submitted to the Corps of Engineers by the Town as Revision 6 to the Project Grand Slam – Phase I Wetland Mitigation Plan, prepared by Robert G. Torgersen and Leonard Jackson Associates. On or before May 1, 2014, the Town shall complete all grading and excavation work, including appropriate erosion control measures, to prepare the Mitigation Parcels for planting. On or before June 1, 2014, all work described in Appendix B shall be completed, and on or before June 30, 2014, the Town shall submit a completed signed and sealed as-built drawing of the Mitigation Parcels to the Corps of Engineers.

21. Maintain the Mitigation Parcels in Perpetuity: Upon satisfaction of the conditions of Paragraph 20, the Town shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain, or otherwise disturb in any manner whatsoever the Mitigation Parcels, except as approved by the Corps of Engineers.

22. Record a Conservation Easement and this Consent Decree: On or before

March 30, 2014, the Town shall ensure that the LDC submits a new draft conservation easement to the Corps of Engineers for its review and approval in accordance with Section XIV of this Consent Decree. The new instrument shall have the objective of preserving the Mitigation Parcels in perpetuity as a purely natural area; shall reference this Consent Decree and the Permit; and shall provide the Corps of Engineers with third-party enforcement rights. Within thirty Days of the Corps of Engineers' approval, the Town shall ensure that the LDC records the instrument approved by the Corps of Engineers, as well as a true and correct copy of this Consent Decree, with the Rockland County Clerk. Upon completion of the recording required by this Paragraph, the Town shall provide written notice of such completion, along with a true and correct copy of the recorded instrument, to the addresses specified in Section XIII of this Consent Decree.

Thereafter, each deed, title, conservation easement, or other instrument conveying an interest in the Mitigation Parcels shall: (a) contain a notice stating that the Mitigation Parcels are subject to this Consent Decree, the Permit, and the conservation easement; and (b) reference the recorded location of this Consent Decree and the conservation easement. In the event that the LDC fails to submit and record the instrument as described in this Paragraph, such failure will be deemed a breach of this Consent Decree by the Town.

23. Submit a Time-Zero Report: Within thirty Days of the completion of all work described in Appendix B, the Town shall submit a time-zero report to the Corps of Engineers for its review under Section XIV of this Consent Decree. The time-zero report shall document, at a minimum, the information specified in special conditions (c)(1), (c)(2), (c)(3), (c)(4), (c)(5),

(c)(6), and (c)(7) of the Permit. The time-zero report shall include photographs taken from fixed points within the Mitigation Parcels to document the conditions of the wetlands.

24. Submit Annual Monitoring Reports: In addition to the time-zero report described in Paragraph 23, the Town shall submit five annual mitigation monitoring reports to the Corps of Engineers for Corps review and approval under Section XIV of this Consent Decree. Each mitigation monitoring report shall include, at a minimum, the information specified in conditions (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), (c)(6), and (c)(7) of the Permit. All data for the reports must be collected between the dates of April 15 and October 15 in the same year the report is submitted. The mitigation monitoring reports shall be submitted on or before November 30 of each year, with the first such report to be submitted on or before November 30, 2014. The Town shall submit the annual mitigation monitoring reports until it has submitted five mitigation monitoring reports acceptable to the Corps of Engineers. Notwithstanding the foregoing, if the Corps of Engineers determines that the success criteria set forth in special condition (d) of the Permit have not been met for at least three consecutive years, the Town shall continue to submit annual monitoring reports until the Corps of Engineers determines that the criteria set forth in special condition (d) of the Permit have been met for three consecutive years.

25. Each report submitted pursuant to this Section of this Consent Decree shall be signed by a person authorized by the Town, and it shall include the following certification:

I certify under penalty of law, pursuant to 28 U.S.C. § 1746, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on personal knowledge or my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my

knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

26. The reporting requirements of this Section of this Consent Decree do not relieve the Town of any reporting obligations required by the CWA or its implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement, except that the Town's compliance with Paragraphs 23 and 24 of this Consent Decree relieves the Town of any reporting obligations contained in the Permit.

27. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

28. Defendant shall be liable to the United States for stipulated penalties for violations of this Consent Decree in accordance with this Section, unless excused under Section IX. A violation includes failing to perform any obligation required by the terms of this Consent Decree, including any Deliverable or modification approved under this Consent Decree, according to all applicable requirements of this Consent Decree and within the specified time schedules established by or approved under this Consent Decree.

29. Late Payment of Civil Penalty. If Defendant fails to pay the civil penalty required to be paid pursuant to Section VI when due, Defendant shall pay a stipulated penalty of \$1,000 per Day for each Day that the payment is late.

30. Failure to Perform Mitigation Work or Maintain the Mitigation Parcels: If the Town fails to timely complete any of the mitigation work required by Paragraph 20 of this

Consent Decree, or if the Town violates any of the requirements of Paragraphs 21 or 22 of this Consent Decree concerning preserving the Mitigation Parcels in perpetuity, the Town shall pay stipulated penalties as follows:

- a. For Day 1 up to and including Day 30 of violation: \$1,500 per Day.
- b. For Day 31 up to and including Day 60 of violation: \$3,000 per Day.
- c. For Day 61 and beyond of violation: \$4,500 per Day.

31. Failure to Submit Reports or Deliverables: If the Town fails to timely submit any report or Deliverable required by this Consent Decree, including the draft or final conservation easement required by Paragraph 22, the Town shall pay stipulated penalties as follows:

- a. For Day 1 up to and including Day 30 of violation: \$1,000 per Day.
- b. For Day 31 up to and including Day 60 of violation: \$2,000 per Day.
- c. For Day 61 and beyond of violation: \$3,000 per Day.

32. The stipulated penalties provided for in this Section shall begin to accrue on the Day after performance is due or on the Day that a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

33. Except as provided in Paragraph 35 below, the Town shall pay any stipulated penalty within thirty Days of receiving a written demand from the United States. The Town shall pay stipulated penalties owing to the United States in accordance with the procedures set forth in Paragraph 18, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

34. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree without further order of the Court.

35. Any disputes concerning the amount of stipulated penalties or the underlying violation that gives rise to the assessment of stipulated penalties are subject to the dispute resolution provisions of Section X of this Consent Decree. Stipulated penalties shall continue to accrue as provided in this Section during any dispute resolution process, but need not be paid until the following:

- a. If the dispute is resolved by agreement or by a decision of the Corps of Engineers that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States within thirty Days of the effective date of the agreement or the receipt of the Corps of Engineers' decision.
- b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within thirty Days of receiving the Court's decision or order, except as provided in subparagraph c of this Paragraph.
- c. If any Party appeals the Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen Days of receiving the final appellate court decision.

36. If the Town fails to pay stipulated penalties according to the terms of this Consent Decree, the Town shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

37. Subject to the provisions of Section V, the stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the CWA, Defendant shall be allowed a credit, for any stipulated penalties paid, against any statutory penalties imposed for such violation.

IX. FORCE MAJEURE

38. Defendant shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by a force majeure event. A "force majeure" event, for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, any entity controlled by Defendant, or Defendant's contractors, which delays or prevents the performance of any obligation under this Consent Decree within the specified time period despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any such event (a) as it is occurring and (b) after it has occurred to prevent or minimize any resulting delay to the greatest extent possible. "Force

majeure” does not include Defendant’s financial inability to perform any obligation under this Consent Decree. For the avoidance of doubt, any failure of the LDC to submit or record the instrument described in Paragraph 22, or to take other steps necessary to permit Defendant to comply with any of its obligations under this Consent Decree, shall not qualify as a force majeure event.

39. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice by telephone, facsimile, and electronic mail to the Corps, in accordance with the notice provisions of Section XIII, within seven Days of when Defendant first knows that the event might cause a delay. Within seven Days thereafter, Defendant shall provide in writing to the United States, in accordance with the notice provisions of Section XIII, an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any written notice required by this Section all available documentation supporting the claim that the delay was attributable to a force majeure event. Failure to comply with the requirements of this Section shall preclude Defendant from asserting any defense of force majeure for that event, and for any additional delay caused by such failure. Defendant shall be deemed to know of any

circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

40. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event may be extended by the United States for such time as is necessary to complete those obligations, without need for further order of the Court. An extension of time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The United States will notify Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

41. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree to the extension of time sought by Defendant, the United States will notify Defendant in writing of its decision. The United States's position shall be binding, unless Defendant invokes the dispute resolution procedures set forth in Section X of this Consent Decree.

42. If Defendant elects to invoke the dispute resolution procedures set forth in Section X, it shall do so no later than fifteen Days after receipt of notice from the United States as set forth in Paragraph 41. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that Defendant could not have foreseen and prevented such delay, that Defendant, including its contractors, exercised best efforts to prevent,

avoid, minimize, and mitigate the delay and its effects, and that Defendant complied with the requirements of this Section.

X. DISPUTE RESOLUTION

43. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism for Defendant to raise and resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendant arising under this Consent Decree.

44. Any dispute subject to the dispute resolution procedures set forth in this Section shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty-one Days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen Days after the conclusion of the informal negotiation period, Defendant files with the Court a motion for judicial resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty Days to respond to the motion and propose an alternate resolution.

45. In any dispute submitted to the Court for resolution pursuant to this Section, Defendant shall have the burden of proving by a preponderance of the evidence that the United

States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendant's position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

46. The invocation of the dispute resolution procedures set forth in this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties and interest, if applicable, with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 35. If Defendant does not prevail on the disputed issue, stipulated penalties and interest, if applicable, shall be assessed and paid as provided in Section VIII.

XI. RIGHT OF ENTRY AND RETENTION OF RECORDS

47. Until termination of this Consent Decree, the Town shall ensure that the LDC provides that the United States and its authorized representatives, including attorneys, contractors, and consultants, shall have the right of entry into the Site at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required by this Consent Decree;
- b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant, the LDC, or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and

- e. assess Defendant's compliance with this Consent Decree, including by inspecting and evaluating Defendant's mitigation activities and by inspecting and reviewing any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

In the event that the LDC fails to provide the United States and its authorized representatives, including attorneys, contractors, and consultants, with the right of entry into the Site at all reasonable times, upon presentation of credentials, for the purposes specified in this Paragraph, such failure will be deemed a breach of this Consent Decree by the Town.

48. Until five years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all Documents, records, or other information (including Documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information retention period, upon request by the United States, Defendant shall provide copies of any Documents, records, or other information required to be maintained under this Paragraph.

49. At the conclusion of the information retention period provided in the preceding Paragraph, Defendant shall notify the United States at least ninety Days prior to the destruction of any Documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States, Defendant shall deliver any such Documents,

records, or other information to the Corps of Engineers. Defendant may assert that certain Documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following information: (a) the title of the Document, record, or information; (b) the date of the Document, record, or information; (c) the name and title of each author of the Document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Document, record, or information; and (f) the privilege asserted by Defendant. However, no Documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

50. This Consent Decree in no way limits or affects any other rights of entry and inspection, or any rights to obtain information, held by the United States, pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain Documents, records, or other information imposed by applicable laws, regulations, or permits.

XII. COSTS

51. The Parties shall bear their own costs of this action, including attorneys' fees. Should Defendant subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendant for noncompliance with or enforcement of this Consent Decree.

XIII. NOTICES

52. Unless otherwise specified herein, all notifications, submissions, or communications required by this Consent Decree shall be made in writing and addressed as follows:

To the United States:

Andrew E. Krause
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
86 Chambers Street, Third Floor
New York, NY 10007

To the Corps of Engineers:

Jodi M. McDonald
Chief, Regulatory Branch
New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

Naomi Handell
Regulatory Project Manager
New York District
U.S. Army Corps of Engineers
Jacob K. Javits Federal Building
New York, NY 10278-0090

To Defendant

Michael L. Klein
Town Attorney
Office of the Town Attorney
Town of Ramapo
237 Route 59
Suffern, NY 10901

Kimberlea Rea, Esq.
Westervelt and Rea LLP
P.O. Box 633
Shelter Island, NY 11964

53. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

54. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIV. APPROVAL OF DELIVERABLES

55. After the Town submits any Deliverable, the Corps of Engineers shall, in writing: (a) approve the Deliverable; (b) approve the Deliverable upon specified conditions; (c) approve part of the Deliverable and disapprove the remainder; or (d) disapprove the Deliverable.

56. If the Deliverable is approved pursuant to Paragraph 55(a), the Town shall take all actions required by the Deliverable, in accordance with the schedules and requirements of the Deliverable, as approved. If the Deliverable is conditionally approved or approved only in part, pursuant to Paragraph 55(b) or (c), the Town shall, upon written direction from the Corps of Engineers, take all actions required by the approved Deliverable that the Corps of Engineers determines are technically severable from any disapproved portions, subject to the Town's right to dispute only the specified conditions or the disapproved portions, under Section X of this Consent Decree.

57. If the Deliverable is disapproved in whole or in part pursuant to Paragraph 55(c) or (d), the Town shall, within twenty Days, or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the Deliverable, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs in this Section of this Consent Decree. If the resubmitted Deliverable is approved in whole or in part, the Town shall proceed in accordance with Paragraph 56.

XV. EFFECTIVE DATE

58. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

XVI. CONTINUING JURISDICTION OF THE COURT

59. This Court shall retain jurisdiction over this action until termination of this Consent Decree for the purposes of resolving disputes arising under this Consent Decree or entering orders modifying this Consent Decree or effectuating or enforcing compliance with the terms of this Consent Decree. During the pendency of this Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate this Consent Decree.

XVII. MODIFICATION

60. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by both Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

XVIII. TERMINATION

61. After Defendant has completed all of the requirements set forth in Section VII, and has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

62. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that this Consent Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating this Consent Decree.

63. If the United States does not agree that this Consent Decree may be terminated, Defendant may invoke the dispute resolution procedures of Section X. However, Defendant shall not use the dispute resolution procedures of Section X for any dispute regarding termination until sixty Days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

64. This Consent Decree shall be lodged with the Court for a period of not less than thirty Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the entry of this Consent Decree if the comments regarding this Consent Decree disclose facts or considerations indicating that this Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this

Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendant in writing that it no longer supports entry of this Consent Decree.

XX. SIGNATORIES AND SERVICE

65. Each undersigned representative of the Defendant and the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

66. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXI. INTEGRATION

67. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein.

XXII. FINAL JUDGMENT

68. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties.

XXIII. APPENDICES


69. The following Appendices are attached to and part of this Consent Decree:
- a. Appendix A is Department of the Army Permit No. 2010-00296;
 - b. Appendix B shows details, terms and conditions of the compensatory mitigation work at the Site, as required by Paragraph 20 of this Consent Decree. Appendix B was submitted to the Corps of Engineers by the Town as Revision 6 to the Project Grand Slam – Phase I Wetland Mitigation Plan, prepared by Robert G. Torgersen and Leonard Jackson Associates. (The electronically filed version of this appendix has been reduced in size to 8.5 by 11 inches.)

The Parties, by their undersigned representatives, enter into this Consent Decree in

United States v. Town of Ramapo.

Dated: March 14, 2014
New York, New York

PREET BHARARA
United States Attorney for the
Southern District of New York

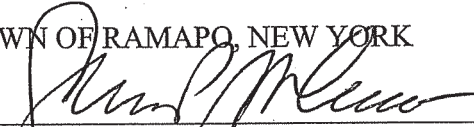
By: 

ANDREW E. KRAUSE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2769
Facsimile: (212) 637-2786

Attorneys for the United States of America

Dated: March __, 2014
Suffern, New York

TOWN OF RAMAPO, NEW YORK

By: 

CHRISTOPHER P. ST. LAWRENCE, Supervisor
MICHAEL L. KLEIN, Town Attorney
237 Route 59
Suffern, New York 10901
Telephone: (845) 357-5100
Facsimile: (845) 357-2936

WESTERVELT AND REA LLP
Kimberlea Rea, Esq.
P.O. Box 633
Shelter Island, NY 11964

On behalf of the Town of Ramapo

IT IS SO ORDERED this _____ day of _____, 2014:

UNITED STATES DISTRICT JUDGE

APPENDIX A



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

REPLY TO
ATTENTION OF:

Regulatory Branch – Eastern Permits Section

APR 14 2011

SUBJECT: Permit Application Number NAN-2010-00296-EHA
by Town of Ramapo

Christoper P. St. Lawrence, Town Supervisor
Town of Ramapo
237 Route 59
Suffern, New York 10901

Dear Mr. St. Lawrence:

The New York District has reviewed of your Department of the Army Permit Application Number NAN-2010-00296-EHA for authorization to maintain as completed 1.11 acres of fill at Firemans Memorial Drive, Pomona, Town of Ramapo, Rockland County, New York. It has been determined that the existing fill constitutes a violation of the statutes and regulations within the jurisdiction of this office.

These statutes and regulations include Section 404 of the Clean Water Act (specifically 33 U.S.C. 1344, which prohibits unauthorized discharges of fill into wetlands and waters of the United States), and the regulations promulgated pursuant thereto (specifically Title 33 of the Code of Federal Regulations, Parts 320 – 331).

However, based on a review of the material submitted, including the proposed creation of 1.88 acres of wetlands as mitigation for the discharge, it appears that the existing fill does not give rise to apparent substantial adverse environmental impacts. Accordingly, this office has determined that further enforcement action on this matter is not warranted.

This office will consider the existing fill and proposed mitigation, as described in the submitted material, and particularly as detailed in the submitted drawing, entitled "Project Grand Slam – Phase I Wetland Mitigation Plan," last revised January 13, 2011, as authorized pursuant to Nationwide General Permit No. 32, provided that the project sponsor complies with the nationwide general permit general conditions (as set out in Section C of the attached description of the nationwide general permit program from the Federal Register), and with the following special conditions:

- a. The permittee shall not discharge any fill into wetlands or waters of the United States without appropriate written authorization from this office. The 0.16 acres of proposed fill as described in your January 25, 2011 correspondence is not authorized by this letter.
- b. The permittee shall accomplish compensatory mitigation through the successful establishment of approximately 1.88 acres of wetlands at the project site, in the Town of Ramapo, Rockland County, New York, as indicated on the plans entitled "Project Grand Slam-Phase I, Wetland Mitigation Plan," last revised January 13, 2011.
- c. The permittee shall provide to this office annual monitoring reports on the status of the compensatory mitigation activities on the mitigation site in each of the following five (5) years, after initiation of the activities authorized by this permit. These reports shall be submitted no later than October 15 in each of the years. All data for the reports must be collected between the dates of April 15 and October 15 in the same year it is submitted. If this office determines that the success criteria outlined in Special Condition D below has not been met for at least three consecutive years, this period will be extended and the permittee shall continue to submit monitoring reports every year until this office determines that the success criteria has been met for three consecutive years. These reports shall be submitted to the following address and include the following at a minimum:

Chief, Regulatory Branch
New York District Corps of Engineers
Jacob K. Javits Federal Building
New York, New York 10278-0090

1. A list of dominant plant species, along with their estimated frequency and percent areal cover in each vegetative strata (i.e. tree, shrub, and herbaceous) for each cover type within the mitigation site(s);
2. Photographs showing all representative areas of each cover type within the mitigation site;
3. A Corps of Engineers approved wetland delineation data sheet for each cover type within the mitigation site;
4. Vegetation cover maps, at a scale of one inch equals 100 feet, or larger scale, outlining the extent (in acres) of each cover type within the mitigation site shall

be prepared for each growing season.

5. Photographs showing all representative areas of each cover type within the mitigation sites, taken at least once each year during the period between June 1 and August 15.

6. Well and gauge data showing water elevations within the mitigation site recorded twice a month during April through September of each year. The location of the monitoring well or gauge shall be shown on the plan view engineering drawing; and

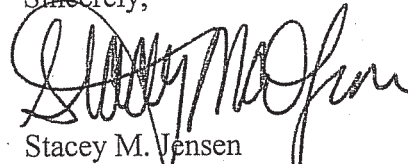
7. A remedial plan, if necessary, outlining all practicable steps taken or proposed to be taken to ensure the success criteria outlined in Special Conditions (d) below are met by the specified due date of the next monitoring report.

- d. The permittee shall ensure that all plantings in conjunction with the mitigation effort shall have an eighty-five (85) percent survival rate which must be met or exceeded at the end of the second growing season following the initial planting/seeding of each phase. If the eighty-five (85) percent survival rate is not met at the end of the second growing season following each phase, the permittee shall take all necessary measures to ensure the level of survival by the end of the next growing season, including re-planting and re-grading if necessary.
- e. The permittee shall secure a conservation easement on the approximately 1.88 acres mitigation site as designated on the plans entitled "Project Grand Slam-Phase I, Site Development Plan and Wetland Mitigation Plan", dated July 1, 2010, in the Town of Ramapo, Rockland County, New York, to guarantee its preservation for wetland and wildlife resources. Copies of the instrument(s) effecting such easement shall be submitted to the New York District Corps of Engineers for approval prior to execution, and the instrument(s) shall be executed and recorded with the Rockland County Registrar of Deeds by JUN 14 2011. The permittee shall also provide to this office a copy of the properly recorded instrument within 30 days of its filing.

The effective date of this authorization shall be the date that this office receives a written confirmation from the permittee (or the designated agent) of the acceptance of the terms and conditions of this authorization.

Your cooperation with the regulatory requirements of this office is appreciated. If any questions should arise concerning this matter, please contact Naomi Handell, of my staff, at (917) 790-8523.

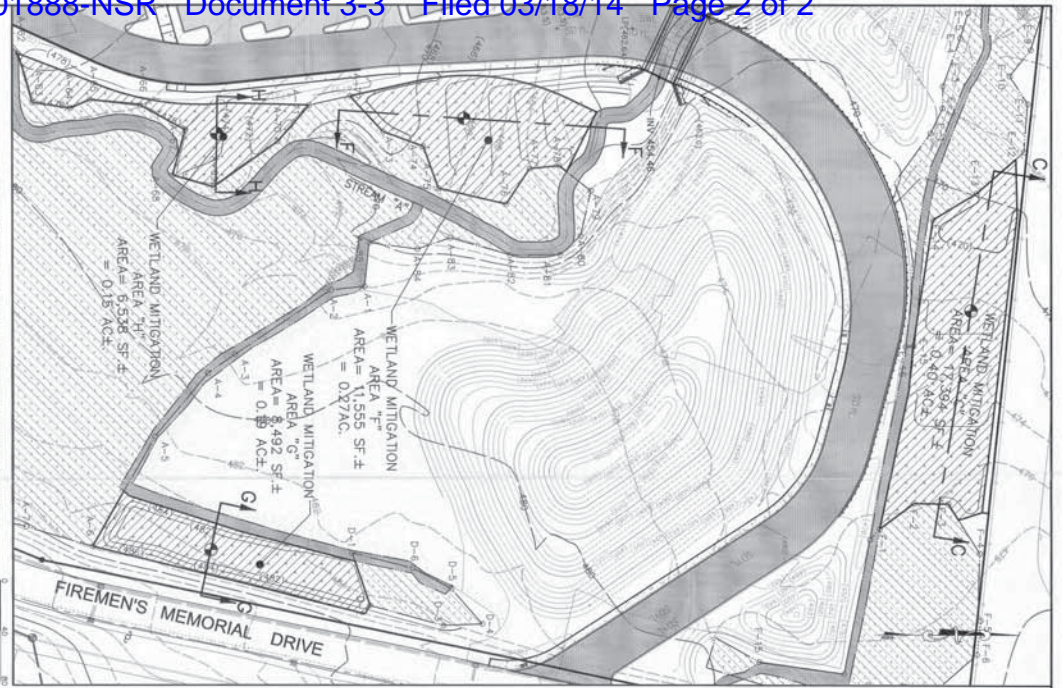
Sincerely,

A handwritten signature in black ink, appearing to read "Stacey M. Jensen". The signature is written in a cursive style with a large initial "S".

Stacey M. Jensen
Chief, Eastern Permits Section

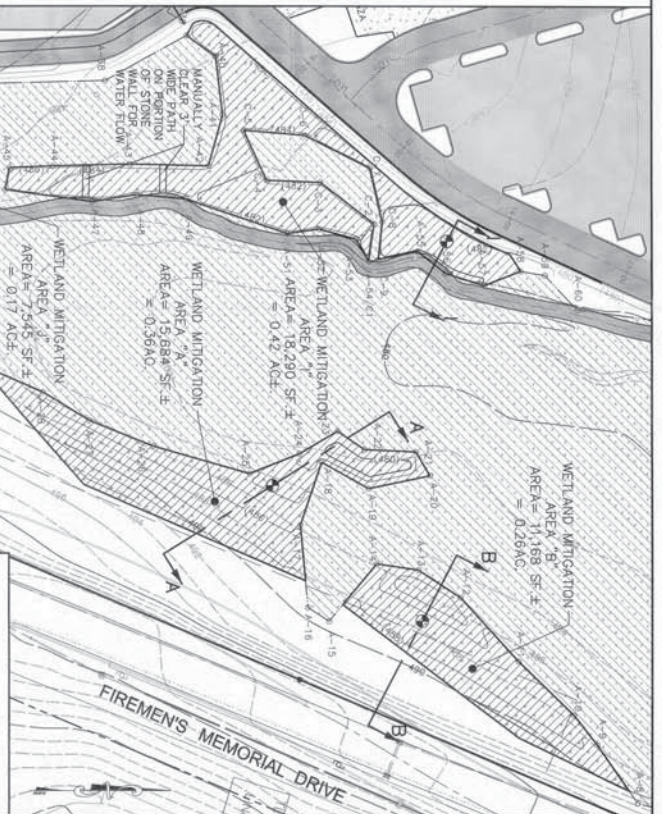
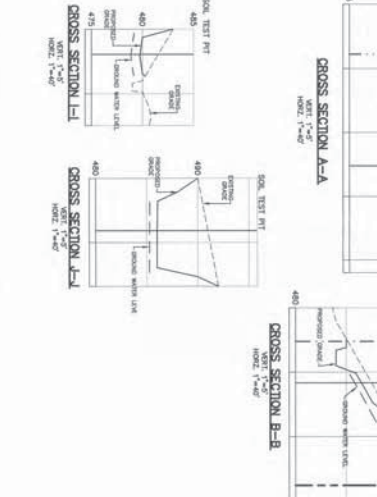
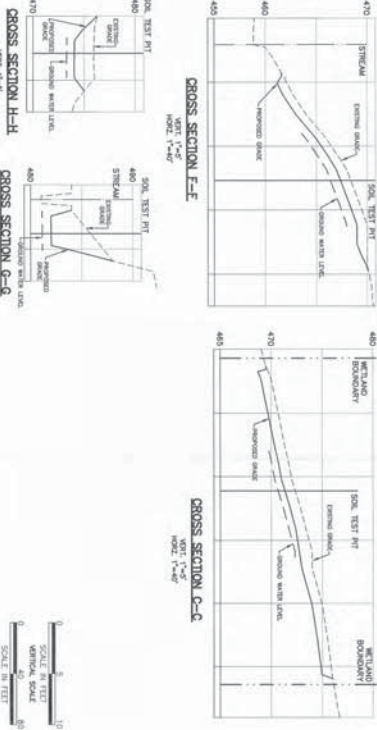
c: NYDEC, Region 3

APPENDIX B



PART PLAN 1: NORTH-EAST WETLAND MITIGATION AREA

PART PLAN 2: SOUTH-EAST WETLAND MITIGATION AREA



SOIL TEST PIT RESULTS

WETLAND MITIGATION AREA	TEST PIT	DEPTH	SOIL TYPE	WETLAND TYPE
WETLAND MITIGATION AREA 'A'	AP	1.0	SP	SWAMP
	BP	1.0	SP	SWAMP
	CP	1.0	SP	SWAMP
WETLAND MITIGATION AREA 'B'	AP	1.0	SP	SWAMP
	BP	1.0	SP	SWAMP
	CP	1.0	SP	SWAMP
WETLAND MITIGATION AREA 'C'	AP	1.0	SP	SWAMP
	BP	1.0	SP	SWAMP
	CP	1.0	SP	SWAMP

WETLANDS, SOILS, USE OF CONSTRUCTION, AND WETLANDS RESTORATION INFORMATION

1. Wetland areas to be created or restored will be located in the field by...
2. Clear area of existing trees and shrubs vegetation, install sediment control...
3. 15% and 20% slopes require 10' x 10' x 6" of stone. Slopes to be on uniform...
4. Construction areas to be protected or enhanced to a minimum equivalent of...
5. The wetland area to be created or restored shall be a minimum of 10' x 10'...
6. The wetland area to be created or restored shall be a minimum of 10' x 10'...
7. Seed the wetland area with native species...

WETLAND MITIGATION CALCULATIONS

MITIGATION AREA	AREA (SQ. FT.)	AREA (ACRES)
A	15,888	0.36
B	11,168	0.26
C	18,290	0.42
D	7,245	0.17
E	8,492	0.19
F	6,536	0.15
G	11,555	0.27
TOTAL MITIGATION AREA	87,174	2.00

ROBERT G. TORGENSEN
A. S. L. A.
LANDSCAPE ARCHITECTURE & ENVIRONMENTAL SCIENCES
1000 PARK DRIVE, SUITE 100, ROCKLAND, NY 12570
845.622.4835 FAX:845.622.6622

LJA LEONARD JACKSON ASSOCIATES
CONSULTING ENGINEERS
200 FREEMAN BOULEVARD, SUITE 100, ROCKLAND, NY 12570
PHONE: 845.622.4835 FAX: 845.622.6622

NO.	DESCRIPTION	DATE
1	AS PER ACD COMMENTS OF 6/8/2013	6/8/13
2	WETLAND MITIGATION REVISIONS	4/25/13
3	CONSERVATION EASEMENTS	5/27/11
4	METS AND BOUNDS FOR CONSERVATION EASEMENTS	5/10/11
5	WETLAND MITIGATION AREA REVISIONS	1/13/11