

## SETTLEMENT AGREEMENT

1. This Settlement Agreement is entered into this 15 day of April, 2013, (the "Effective Date") between the UNITED STATES OF AMERICA, on behalf of the United States Army Corps of Engineers ("Corps") (collectively the "United States"), and SUGARHOUSE HSP GAMING, L.P., and its divisions, affiliates, subsidiaries, successors, assigns, transferees, employees, servants, agents, and representatives ("SugarHouse"), to resolve potential civil claims asserted by the United States more fully described herein.

### PREAMBLE

2. The SugarHouse casino and entertainment complex, 941-1107 North Delaware Avenue, Philadelphia, PA 19123, is located along the Delaware River. Under Section 10 of the Rivers and Harbors Act ("RHA"), 33 U.S.C. § 403 *et seq.*, the Corps exercises jurisdiction over work in or affecting "navigable waters of the United States." Pursuant to Corps regulations at 33 C.F.R. § 322.2(a), navigable waters of the United States are defined as "those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce." The Delaware River at the location of the SugarHouse site is subject to the ebb and flow of the tide. Further, the river was used in the past, is currently being used, and is susceptible to being used to transport interstate and/or foreign commerce. Therefore, the Delaware River is a "navigable water of the United States" subject to the Corps' Section 10, RHA jurisdiction. The extent of federal RHA jurisdiction at the SugarHouse site is the mean high water line.

3. Under the Clean Water Act ("CWA"), 33 U.S.C. § 1311 *et seq.*, the Corps exercises jurisdiction over the "discharge of dredged and/or fill material into waters of the

United States.” Pursuant to Corps regulations at 33 C.F.R § 328.3(a)(1), “waters of the United States” means, in part, all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.” As such, the waters at the SugarHouse site fall under Corps CWA jurisdiction. Since there are no adjacent wetlands, the extent of federal CWA jurisdiction at the SugarHouse site is the high tide line. This line is higher in elevation and typically located landward of the mean high water line.

4. The United States asserts that SugarHouse, and/or persons acting on its behalf, discharged dredged and/or fill material into waters of the United States at the SugarHouse casino and entertainment complex without a Corps permit, thereby violating Section 10 of the RHA, 33 U.S.C. § 403 et seq., and Section 301 of the CWA, 33 U.S.C. § 1311 et seq.

Specifically, the United States asserts that unauthorized work was performed at five stormwater management outfalls at the SugarHouse casino and entertainment complex (A, B, C, D, and F), an area waterward of the Gabion Wall, as well as areas along Piers 42 and 43. An aerial photo showing the location of each alleged violation is attached as Exhibit 1. The United States asserts that the Corps observed unauthorized work at the locations identified in Exhibit 1, and, observed subsequent removal of the unauthorized work after the Corps issued Cease and Desist letters dated January 29, 2010, July 19, 2010 and January 6, 2011, as follows:

- Two separate episodes of unauthorized work were observed at Outfall A on January 28, 2010 and July 27, 2010, with complete removal of the unauthorized work at Outfall A observed on August 5, 2010.
- Two separate episodes of unauthorized work were observed at Outfall B on January 28, 2010, a third episode was observed on March 9, 2010, with complete removal of the unauthorized work at Outfall B observed on August 5, 2010.
- Three separate episodes of unauthorized work were observed at Outfall C on December 7, 2009, December 15, 2009, and January 28, 2010, with complete removal of the unauthorized work at Outfall C observed on August 5, 2010.
- One episode of unauthorized work was observed at Outfall D on December 15, 2009, with complete removal of the unauthorized work at Outfall D observed on July 30, 2010.
- One episode of unauthorized work was observed in an area waterward of the Gabion Wall on January 28, 2010, with complete removal of the unauthorized work in this area observed on December 9, 2010.
- Four separate episodes of unauthorized work were observed at areas along Piers 42 and 43 on May 26, 2009, September 10, 2009, January 28, 2010, and May 28, 2010, with complete removal of the unauthorized work in these areas observed on December 9, 2010.

- One episode of unauthorized work was observed at Outfall F on November 8, 2010. Partial removal of the unauthorized work in this area was observed on May 20, 2011, and the remaining work is authorized by a nationwide permit per Paragraph 13 below.

All of the foregoing in Paragraph 4 is hereinafter referred to as the “Covered Conduct.”

5. The United States contends that, for the Covered Conduct, it has civil claims and civil causes of action against SugarHouse for injunctive relief and civil penalties, under Section 10 of the RHA, 33 U.S.C. § 403 *et seq.*, and Section 301 of the CWA, 33 U.S.C. § 1311 *et seq.*

6. This Settlement Agreement does not constitute an admission of liability or fault by SugarHouse, nor a concession by the United States that its claims are not well-founded. This Settlement Agreement is entered into to avoid the delay, uncertainty, risk, inconvenience, and expense of protracted litigation.

7. This Settlement Agreement is intended to constitute a complete and final settlement of the United States’ claims under the CWA and the RHA against SugarHouse for the Covered Conduct.

8. The United States and SugarHouse agree that settlement of this case is in the public interest.

9. It is the express purpose of the Parties in entering into this Settlement Agreement to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251.

### TERMS AND CONDITIONS

10. In consideration of the mutual promises, covenants, and obligations set forth below, and for good and valuable consideration as stated herein, the Parties agree as follows:

11. SugarHouse shall pay to the United States the sum of Twenty Five Thousand Dollars (\$25,000) as a civil penalty. Payment of the \$25,000 will be made by electronic funds transfer pursuant to instructions provided to SugarHouse's counsel by the United States Attorney's Office, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106. SugarHouse shall make payment of the \$25,000 within fourteen (14) days of the execution of this Settlement Agreement by all parties. Upon this payment, SugarHouse shall provide written notice to the United States Attorney's Office that such payment was made in accordance with this paragraph.

SugarHouse shall pay the sum of Six Hundred and Twenty-Five Thousand Dollars (\$625,000) by a certified or cashier's check made payable to the Brandywine Conservancy, which is a Corps approved non-profit conservation organization with demonstrated experience in land and water conservation for the express purpose of protecting, in perpetuity, waters, wetlands, and their upland buffers in the following Pennsylvania counties: Chester, Montgomery, Bucks, Delaware and/or Philadelphia Counties. All funds shall be expended as set forth in the March 19, 2013 letter from the Brandywine Conservancy to the Corps attached hereto as Exhibit 2. The Corps shall be responsible to ensure that the disposition of all funds conforms to the representations set forth in Exhibit 2. SugarHouse shall tender the certified or cashier's check to the Brandywine Conservancy within fourteen

(14) days of the execution of this Settlement Agreement by all parties, and concurrently send a copy of the transmittal letter and check to counsel for the United States.

The two payments totaling Six Hundred and Fifty Thousand Dollars (\$650,000) shall be referred to in this Settlement Agreement as the "Settlement Amount."

12. Subject to the exceptions in Paragraph 17 below (concerning claims excluded from this Settlement Agreement), and conditioned upon SugarHouse paying the Settlement Amount in full in accordance with Paragraph 11 above, the United States fully and finally releases SugarHouse (and its divisions, affiliates, subsidiaries, successors, assigns, transferees, employees, servants, agents, and representatives) from any and all civil or administrative claims and causes of action (including for attorney's fees, costs, and expenses of every kind and however denominated) the United States has asserted, could have asserted, or may assert in the future under the CWA and the RHA for the Covered Conduct.

13. Subject to the terms of this Settlement Agreement, and conditioned upon SugarHouse paying the Settlement Amount in full in accordance with Paragraph 11 above, the Corps acknowledges that all CWA Section 404, 33 U.S.C. 1344, discharges and all RHA Section 10, 33 U.S.C. 403, work associated with the construction of stormwater outfall F located on the SugarHouse site, as shown on Exhibits 1, 3 and 4, is hereby authorized subject to the terms and conditions of Nationwide Permit 32, found at Federal Register, Volume 77, No. 34, February 21, 2012, page 10277 as of the Effective Date of this Settlement Agreement.

14. Except as in accordance with the Nationwide Permit, SugarHouse (and its divisions, affiliates, subsidiaries, successors, assigns, and transferees) agrees not to discharge

any dredged or fill material into waters of the United States, unless such discharge complies with the provisions of the CWA, the RHA, and their implementing regulations.

15. This Settlement Agreement is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, Section 10 of the Rivers and Harbors Act, or any other law except as expressly provided in Paragraph 13. Nothing in this Settlement Agreement shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit.

16. This Settlement Agreement in no way affects or relieves SugarHouse of its responsibility to comply with any applicable federal, state, or local law, regulation, or permit.

17. Notwithstanding any term of this Settlement Agreement, the following are specifically reserved and excluded from the scope and terms of this Settlement Agreement:

a. Any civil, criminal, or administrative liability arising under Title 26 United States Code (Internal Revenue Code). Nothing in this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the payments made pursuant to this Settlement Agreement for purposes of the Internal Revenue laws.

b. Any criminal liability.

c. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct.

d. The rights of the United States as against any person not a party to this Settlement Agreement.

18. SugarHouse (and its divisions, affiliates, subsidiaries, successors, assigns, transferees, employees, servants, agents, and representatives) fully and finally releases the United States, its agencies, employees, servants, and agents (including, but not limited to, the Corps) from any claim (including for attorney's fees, costs, and expenses of every kind and however denominated) that SugarHouse has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

19. Each party to this Settlement Agreement shall bear its own costs and attorney's fees incurred in connection with this matter.

20. SugarHouse represents that it freely and voluntarily enters into this Settlement Agreement, without any degree of duress or compulsion whatsoever.

21. SugarHouse understands and agrees that the United States may disclose to the public the fact that this Settlement Agreement resolves disputed claims, and the contents of the Settlement Agreement.

22. Each person who signs this Settlement Agreement in a representative capacity warrants that he or she is duly authorized to do so.

23. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.



24. This Settlement Agreement is binding upon the divisions, affiliates, subsidiaries, successors, assigns, transferees, employees, servants, agents, and representatives of SugarHouse.

25. This Settlement Agreement constitutes the complete agreement among the Parties. This Agreement may not be amended except by written consent of the Parties.

26. All notices or instructions required under this Settlement Agreement shall be made to the Parties through each of the following persons and addresses by certified mail, or overnight mail, delivery confirmation:

a. TO THE UNITED STATES ATTORNEY'S OFFICE

Stacey L. B. Smith  
Assistant United States Attorney  
United States Attorney's Office  
615 Chestnut Street, Suite 1250  
Philadelphia, PA 19106  
(215) 861-8348

b. TO SUGARHOUSE

Jonathan E. Rinde, Esq.  
Manko, Gold, Katcher & Fox, LLP  
401 City Line Avenue, Suite 500  
Bala Cynwyd, PA 19004  
(484) 430-5700

UNITED STATES OF AMERICA:


Dated: 4/15/13

  
ZANE DAVID MEMEGER  
UNITED STATES ATTORNEY

Dated: 4/15/13

  
MARGARET L. HUTCHINSON  
Assistant United States Attorney  
Chief, Civil Division

Dated: 4/15/13

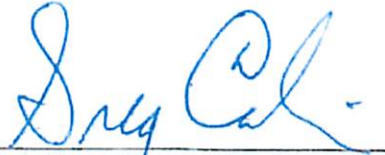
  
MARY CATHERINE FRYE  
Assistant United States Attorney  
Deputy Chief, Affirmative, Civil Division

Dated: 4/15/13

  
STACEY L. B. SMITH  
Assistant United States Attorney

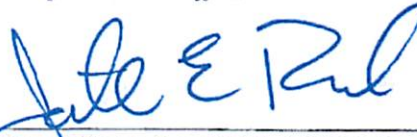
SUGARHOUSE

Dated: 4/8/13



GREGORY A. CARLIN  
SugarHouse HSP Gaming, LP  
900 N. Michigan Avenue, Suite 900  
Chicago, IL 60611  
*Chief Executive Officer*

Dated: 4/8/13



JONATHAN E. RINDE, ESQUIRE  
Manko, Gold, Katcher & Fox, LLP  
401 City Avenue, Suite 500  
Bala Cynwyd, PA 19004  
*Counsel for SugarHouse*





**EXHIBIT 1**  
**Settlement Agreement**  
**United States & HSP Gaming, L.P.**  
**CENAP-OP-R-2007-120 (NWP-32)**  
**Surveillance and Enforcement Section**  
**Regulatory Branch, Philadelphia District**  
**U.S. Army Corps of Engineers**

0 50 100 200 300 400  
Feet

*Plan prepared by Mr. Kevin Maley, Surveillance and Enforcement Section, Regulatory Branch, Philadelphia District, U.S. Army Corps of Engineers, on February 26, 2013, using GoogleEarth aerial imagery dated April 11, 2010 and ESRI ArcMap.*





ENVIRONMENTAL MANAGEMENT CENTER  
BRANDYWINE CONSERVANCY  
P.O. BOX 141 CHADDS FORD PENNSYLVANIA 19317 • 610/388-2700 • FAX 610/388-1575

March 19, 2013

Mr. Barry F. Gale, NAP  
Office of Counsel  
U. S. Army Corps of Engineers  
Wanamaker Building, 6<sup>th</sup> Floor  
100 Penn Square East  
Philadelphia, PA 19107

RE: U.S. v. Sugarhouse Settlement Agreement

Dear Mr. Gale:

The Brandywine Conservancy is most interested in continuing to receive monetary contributions under the Army Corps of Engineers' Voluntary Contributions Program. We understand that, under the settlement agreement between U.S. v. Sugarhouse, \$625,000 would be paid by Sugarhouse Casino for the purpose of mitigating harm to waters of the United States in the Delaware River watershed. If the settlement agreement directs the payment of any such funds to the Brandywine Conservancy, the Conservancy's utilization of the funds would be limited to the purchase of fee simple title in or conservation easements on properties that contain waters, wetlands, and associated upland buffers in Chester, Montgomery, Bucks, Delaware, and/or Philadelphia Counties, Pennsylvania.

We understand that the settlement agreement would require that the Corps be responsible for monitoring the expenditure of the \$625,000 Sugarhouse payment and assuring, through the enforcement of the commitments undertaken in this letter and applicable Federal law, that the funds are expended as represented in this letter. Among other things, the Corps must approve any proposed use of the funds before they are committed or expended by the Conservancy. In addition, the Conservancy must report to the Corps how funds have actually been used. We agree to these requirements and welcome Corps oversight of the expenditure of these funds.

There are numerous projects within the Delaware River watershed, in which we are actively cultivating the landowners to conserve their land with a conservation easements or acquire fee simple title, and for which Sugarhouse Casino settlement funds would be welcome.

- The 70-acre Jacob & Sadie Fisher property in Honey Brook Township, Chester County, PA, through and from which flow three first-order streams (approximately 1,500 feet in aggregate length) and associated wetlands that constitute source water tributaries of the West Branch Brandywine Creek, a tributary of the Delaware River.
- The 74-acre Jonas B. & Deborah Ann Stoltzfus property consists of three adjacent parcels across which flow three first-order tributaries streams that are headwater sources of the West Branch Brandywine Creek.
- The 30-acre Daniel S. & Melinda Stoltzfus property is crossed by a second-order tributary stream of the West Branch Brandywine Creek.
- The 48-acre John R. & Prescilla Stoltzfus property, also in Honey Brook Township, Chester County, contains approximately 1,200 feet of a third-order stream and associated wetlands that provide source waters to the West Branch Brandywine Creek.
- Two adjacent properties (33 and 37 acres) along the main stem of the Brandywine Creek in Birmingham Township, Chester County, owned respectively by Bert and Sherry Kerstetter, have a combined 0.6 miles of frontage on the Brandywine Creek and support approximately 12 acres of emergent wetlands and remnant open water oxbows. Both properties are entirely within the 100-year floodplain.
- The 42-acre Steinert property, situated immediately upstream of the Kerstetter properties in Birmingham Township, Chester County, has approximately 1,500 feet of frontage on the main stem of the Brandywine Creek, supports are very large delineated wetland, and is almost entirely within the 100-year floodplain.
- The Woodlawn Trustees own over 300 acres in Concord Township, Delaware County through which flow first- and second-order tributaries of Beaver Creek, a tributary of the main stem Brandywine Creek. The property also support emergent wetlands in which endangered species have been observed.

The owners of all of the above properties are being actively cultivated to grant easements or fee title in their properties. While we are uncertain which of these landowners will agree to preserve their properties, we are confident that we will be able to protect some of them.

The Brandywine Conservancy has for the past ten years been actively working to permanently protect land in Honey Brook Township, Chester County, where the Brandywine Creek begins, working in cooperation with the township and Chester County. We assisted the City of Wilmington, Delaware in developing its 2010 Source Water Protection Plan, which among other things designates three land clusters along key source water tributaries of the Brandywine Creek – the City's primary source of potable water – as priorities for preservation and implementation of improved land management practices. The Conservancy is actively working to carry out the Plan's goals. Recently, Chester County announced a new grant program to fund land and easement purchases on land within or adjacent to the City's designated clusters. The Brandywine Conservancy is in the process of developing, funding, and implementing a multi-year program to continue its work preserving key lands in Honey Brook Township that contain source water tributary streams of the East and West Branches of the Brandywine Creek. We have identified dozens of properties for preservation and will be contacting these owners to determine their willingness to conserve their properties. By preserving the lands that border or

contain these headwater streams and ensuring that their owners do not alter the streams and wetlands and follow best management practices, we expect to see improved water quality at the headwaters of the Brandywine Creek. We have lined up numerous partners for this project and the availability of funds from the Sugarhouse payment would greatly improve the success of the program.

There are numerous other qualifying properties in the Brandywine Creek/Christina River Watershed, whose owners we would approach if funds were available to purchase conservation easements. There are two adjacent properties with headwater tributaries of the Red Clay Creek in West Marlborough Township, Chester County, whose owners may be willing to preserve their land. We are also working to conserve properties in the headwater reaches of the middle branch of the White Clay Creek in London Grove Township, Chester County. The White Clay Creek is a federally designated Wild and Scenic River and a major tributary of the Christina River, which enters the Delaware River at Wilmington, Delaware. Finally, we are frequently presented with other potential land and easement projects that would fully qualify under the Corps' program and for which the Sugarhouse funds might be utilized.

In all cases, the easements would severely restrict new construction and impose prohibitions and restrictions against to diking, damming, filling, or alteration of streams and wetlands and the cutting and removal of trees in woodlands – especially along water courses. Land use activities would be subject to best management practices. By restricting construction and requiring best land use management practices, these easements would help protect surface and ground water resources.

Please be advised that our staff annually inspects every property on which we hold or co-hold a conservation easement. We also maintain a restricted endowment fund to underwrite staff time and expenses devoted to monitoring and upholding the easements and, if necessary, we are prepared to take legal action to enforce the easement restrictions. As required under the Internal Revenue Code (section 170(h)(1)), in order to be a "Qualified Organization" (i.e., an eligible easement holder) of a "Qualified Conservation Contribution" (a tax deductible conservation easement), the Brandywine Conservancy must (and does) have the commitment to protect the easement's conservation purposes and have the resources to enforce the restrictions. Moreover, in its annually filed Form 990, the Brandywine Conservancy must (and does) provide detailed information about the easements we hold, our policies and procedures for managing and defending them, and the staff time and costs devoted to monitoring, inspecting, and enforcing the easements.

The Brandywine Conservancy was formed in 1967 as a 501(c)3 charitable organization, incorporated in the State of Delaware and a licensed to operate in Pennsylvania. Our offices are located in Chadds Ford, Pennsylvania. We are committed to the belief that preservation and wise use of natural and cultural resources provide health, education, beauty, and increased quality of life for individuals and communities. Our mission is to assure present and future generations of open space, dependable water supplies, historical sites, and important works of American art, and also provide an understanding of the meaning and potential of these things,



both separately and in relation to each other. The Conservancy preserves, protects, interprets, utilizes and displays these resources through its Brandywine River Museum and Environmental Management Center.

We have protected thousands of acres of open land, forests, historic sites, streams and wetlands primarily in Delaware and Chester Counties, Pennsylvania and New Castle County, Delaware by the acquisition of fee simple title and conservation easements. Currently, the Conservancy owns over 2,300 acres and holds over 445 separate easements protecting approximately 37,000 acres.

Since 2000, when the Brandywine Conservancy received its first contribution under the Army Corps of Engineers' Voluntary Contributions Program for protecting waters, wetlands, and associated upland buffers, we have received a total of \$1,197,500 in contributions. These contributions are held in a restricted fund and are only available for the specific uses established by the Army Corps of Engineers. To date, the Conservancy has used \$329,308 of these funds to purchase conservation easements and fee simple title on eight separate qualifying properties.

The Brandywine Conservancy is most appreciative of having received the monetary contributions under the Corps' program. We have been careful to strictly follow the rules in how these funds are used. We look forward to receiving contributions under this program in the future and would gratefully accept the funds that may result from the Sugarhouse settlement agreement.

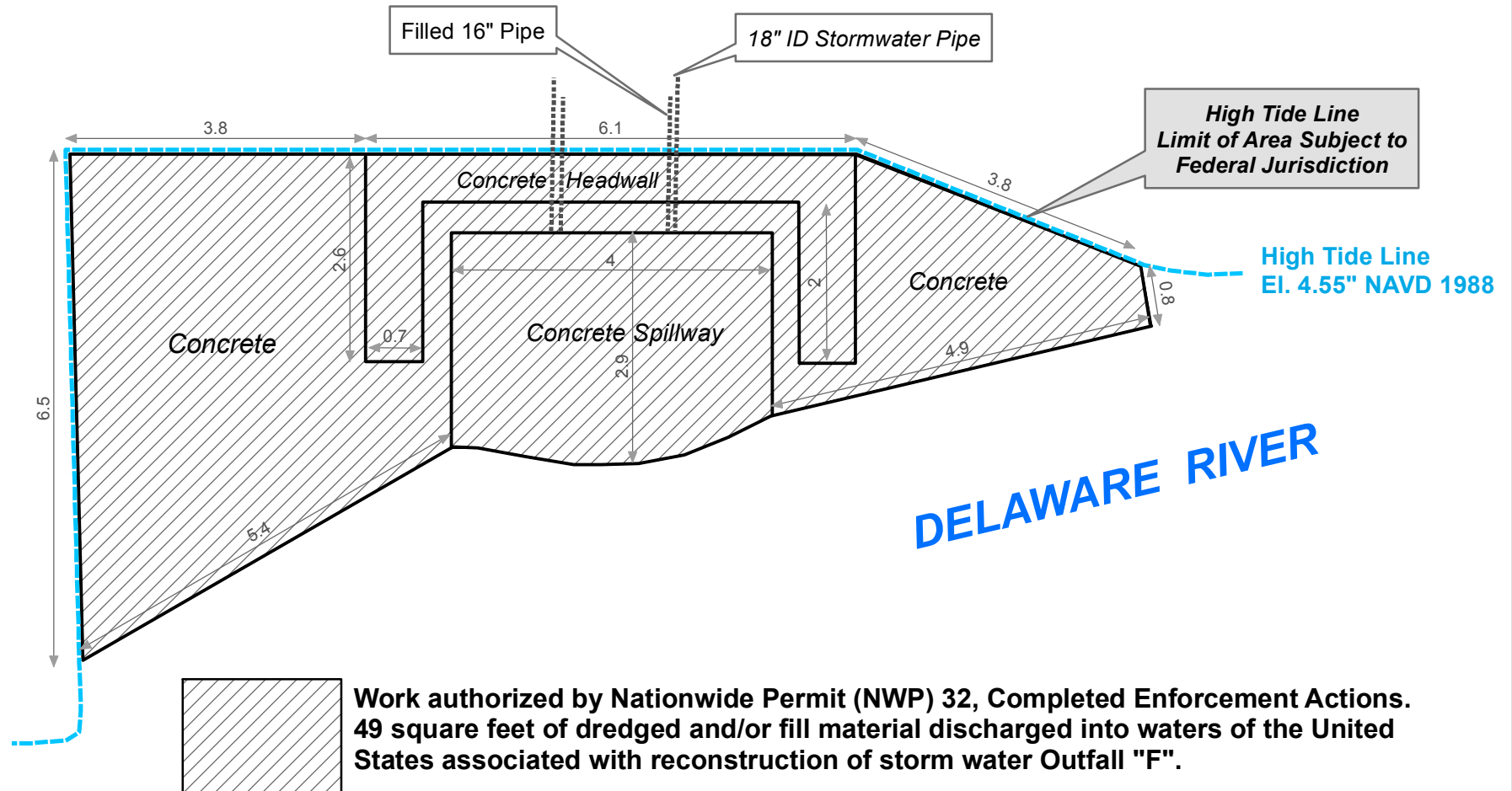
Sincerely yours,

A handwritten signature in dark ink, appearing to read "David D. Shields", with a stylized, flowing script.

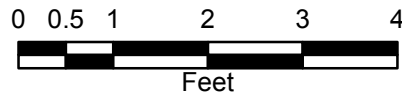
David D. Shields  
Associate Director  
Environmental Management Center  
Brandywine Conservancy, Inc.

Sent by email and U. S. Mail



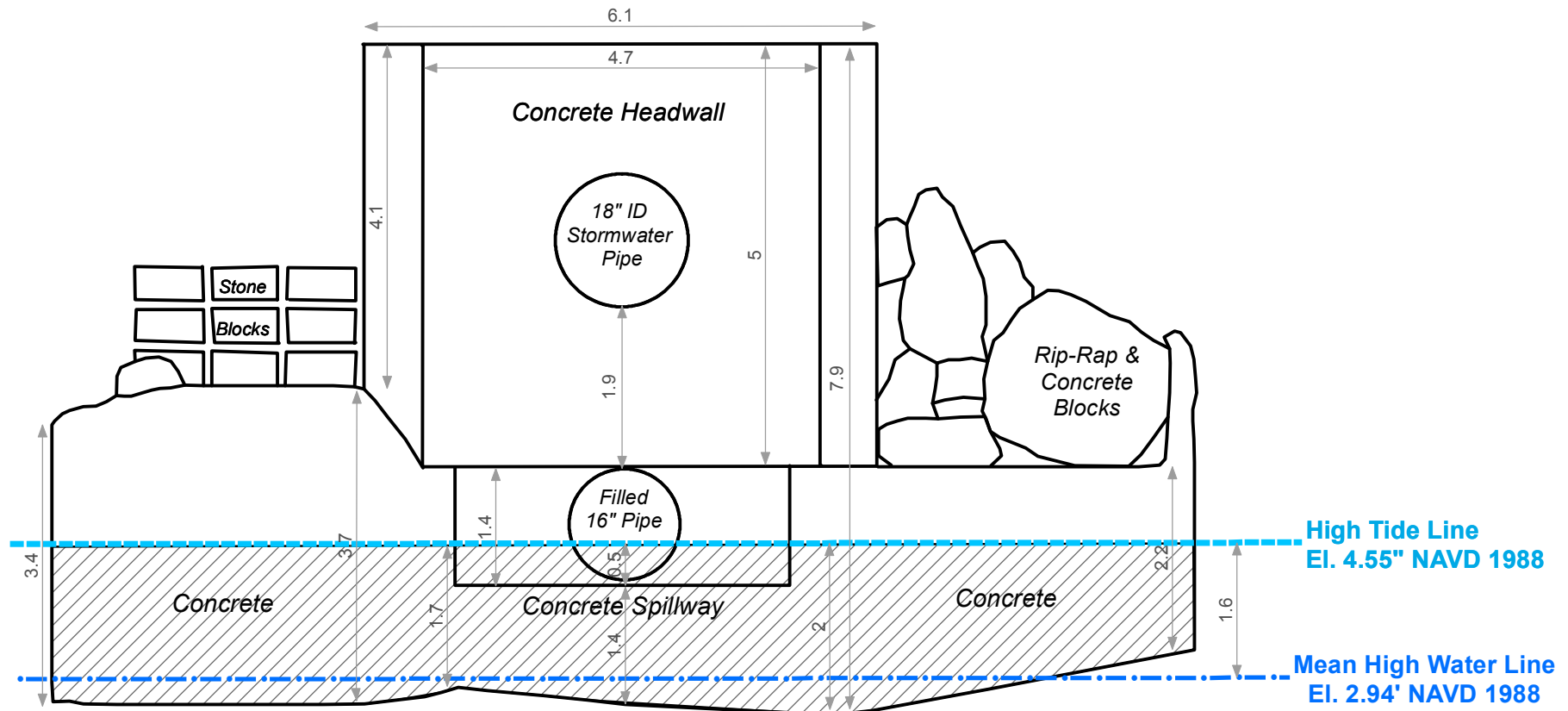


## OUT FALL "F" (Plan View)



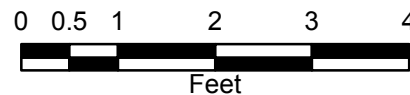
## EXHIBIT 3

**Settlement Agreement:**  
**United States & HSP Gaming, L.P.**  
**CENAP-OP-R-2007-120 (NWP-32)**  
**Surveillance and Enforcement Section**  
**Regulatory Branch, Philadelphia District**  
**U.S. Army Corps of Engineers**



Work authorized by Nationwide Permit (NWP) 32, Completed Enforcement Actions.  
49 square feet of dredged and/or fill material discharged into waters of the United States associated with reconstruction of storm water Outfall "F".

## OUT FALL "F" (Front View)



## EXHIBIT 4

**Settlement Agreement:**  
**United States & HSP Gaming, L.P.**  
**CENAP-OP-R-2007-120 (NWP-32)**  
**Surveillance and Enforcement Section**  
**Regulatory Branch, Philadelphia District**  
**U.S. Army Corps of Engineers**

Plan prepared by Messrs. Kevin F. Maley and Jeffrey Steen, Philadelphia District, USACE, on February 11, 2013, using field measurements dated January 31, 2013. Elevations provided by Mr. Stephen A. Farrell, Philadelphia District, Survey Branch, based on survey dated May 20, 2011.