

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

\_\_\_\_\_  
UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
GUY B. SNOWDEN, DIANE P. )  
SNOWDEN, FCF REALTY, LLC and )  
FALLS CREEK FARM, LLC, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**CONSENT DECREE**

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed a Complaint herein against Defendants Guy B. Snowden, Diane P. Snowden, FCF Realty, LLC and Falls Creek Farm, LLC (collectively, “Defendants”), alleging that Defendants violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a);

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at various sites (“Sites”) on property owned by one or more of the Defendants known as Falls Creek Farm (the “Farm”) on Bailey Road in the Town of Sterling, Windham County, Connecticut, as depicted in Appendix A and as more fully described in the Complaint, without authorization by the United States Department of the Army Corps of Engineers (the “Corps”);

WHEREAS, the Complaint seeks (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA Section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the Complaint regarding the Sites;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that it is in the parties' interest to resolve the United States' claims under the CWA against Defendants by entry of this Consent Decree; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

#### I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the District of Connecticut pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the Defendants conduct business in this District, the subject properties are located in this District, and the causes of action alleged herein arose in this District.

3. The Complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

## II. APPLICABILITY

4. The obligations of this Consent Decree, its Appendices, and the approved work plan referenced in the Appendices (hereinafter referred to collectively as the “Consent Decree”) shall apply to, and be binding upon Defendants, jointly and severally, and to their 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 any of the Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with any Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Sites or other portions of the Farm, as described in Paragraphs 28-30 and 41-82 of the Complaint, and as depicted in Appendix A to the Complaint, and the transfer of ownership or other interest in any other areas that are subject to the restoration and/or mitigation requirements of this Consent Decree (the “Restoration and Mitigation Areas”), separately or in combination, shall not alter or relieve Defendants of their



obligation to comply with all of the terms of this Consent Decree. At least thirty (30) days prior to any transfer of ownership or other interest in such sites, the Defendant(s) making such transfer shall provide written notice and a copy of this Consent Decree to its/their successor(s) in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section XII below that such notice has been given. As a condition to any such transfer, the Defendant(s) making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

### III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants under CWA Section 301 concerning the Sites.

7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. Defendants' obligations under this Consent Decree are joint and several.

9. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its



implementing regulations, including (but not limited to) any individual or general permit which may be required under CWA section 404, 33 U.S.C. § 1344.

10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the United States Army 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 EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c). Any discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Consent Decree.

11. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

12. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.

14. Except as set forth in Paragraphs 1, 2 and 3, nothing in this Consent Decree shall constitute an admission of fact or law by any party, except in an action to enforce the terms of this Consent Decree.

#### IV. CIVIL PENALTIES

15. Defendants shall pay a civil penalty to the United States in the amount of Four Hundred and Five Thousand Dollars (\$405,000), within 60 days of entry of this Consent Decree.

16. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer (“EFT”) or wire transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2011V01517, EPA Region I and DOJ case number DJ # 90-5-1-1-18622/1. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Connecticut. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

17. Upon submission of the civil penalty required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section XII of this Consent Decree, that such payment was made in accordance with Paragraph 16.

18. Civil penalty payments pursuant to this Consent Decree (including stipulated penalty payments under Section XI) 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.

#### V. WETLAND AND STREAM RESTORATION AND MITIGATION

19. Defendants shall perform wetland and stream restoration and mitigation projects (the “Restoration and Mitigation Work”) under the terms and conditions stated in Appendix B appended hereto and in accordance with the Restoration and Mitigation Work Plan approved

thereunder, all of which are incorporated by reference. The parties acknowledge and agree that the objective of such restoration and mitigation projects is to restore and replace the lost ecological functions and values of the filled and disturbed wetlands, brooks, ponds and streams described in the Complaint.

20. Upon completion of the terms and conditions of Appendix B, and except for activities conducted in accordance with Appendix B, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any of the wetlands, brooks, ponds and streams that Defendants have created or restored at the restoration and mitigation areas identified in Appendix B, except as approved in advance by EPA in writing and, as necessary, authorized in advance by the U.S. Army Corps of Engineers.

21. Defendants shall submit periodic reports to EPA documenting the progress of the development and implementation of the Restoration and Mitigation Work Plan, in accordance with the requirements and schedules specified in Appendix B.

22. To ensure that all parcels of land identified in Appendix B remain undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Recorder of Deeds Office in Windham County, Connecticut. Thereafter, each deed, title, or other instrument conveying an interest in the Farm (including but not limited to the Restoration and Mitigation Areas described in Appendix B), shall contain a notice stating that the property is subject to this Consent Decree. Defendants shall also provide the United States with copies of such recordation.



23. Where any compliance obligation under this Section requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendants may seek relief under the provisions of Section X of this Consent Decree (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

#### VI. NOTICES AND OTHER SUBMISSIONS

24. Following entry of the Consent Decree and until the monitoring period is completed, Defendants shall provide the United States with written progress reports regarding Restoration and Mitigation Work at the addresses specified in Section XII of this Consent Decree, in accordance with the requirements of and schedule in Appendix B.

25. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall sign and certify such notices, documents and reports as follows:

I certify under penalty of law 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 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.

Signature by any one Defendant shall satisfy this requirement on behalf of all Defendants.

## VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

26. Until ten (10) years after entry of this Consent Decree, Defendants shall each preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Appendix B, regardless of any corporate retention policy to the contrary. Until ten (10) years after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix B.

27. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the United States requests delivery of Defendants' records or documents and the Defendants assert a privilege over such documents, they shall provide the United States with the following information concerning the privileged documents: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

28.a. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times and upon prior notice to enter the Farm (including the Restoration and Mitigation Areas) to:

- 1) Monitor the Farm (including the Restoration and Mitigation Areas) and measure compliance with the terms and conditions of this Consent Decree;
- 2) Verify any data or information submitted to the United States;
- 3) Obtain samples;
- 4) Inspect and evaluate Defendants' Restoration and Mitigation Work; and
- 5) Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

b. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring, and to obtain information from the Defendants as authorized by law.

#### VIII. DISPUTE RESOLUTION

29.a. This Section shall govern all disputes arising with respect to the meaning or requirements of this Consent Decree, with the exception of disputes concerning EPA's comments on, modification of, approval of, or disapproval of the Restoration and Mitigation Work Plan (or other item required to be submitted under Appendix B), which are governed by the dispute resolution procedures in Appendix B.

b. Any dispute that arises with respect to the meaning or the requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and Defendants affected by the dispute to attempt to resolve such dispute. The period for



informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendants file a motion with the Court seeking 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 (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear 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 Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

30. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendants shall have fourteen (14) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendants shall bear 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 that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

31. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 52 below regarding payment of stipulated penalties.

#### IX. FORCE MAJEURE

32. Defendants 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 events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, inter alia, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of the Sites (including the Restoration and Mitigation Areas), or failure to obtain necessary federal, state or local permits unless, as described in Paragraph 23, Defendants have submitted timely and complete applications and have taken all other actions necessary to obtain all such permits or approvals.

33. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, Defendants shall notify the United States in writing within seven (7) calendar days after the event at the addresses listed in Section XII. Such notice shall include a discussion of the following:

A. what action has been affected;

- B. the specific cause(s) of the delay;
- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

34. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.

35. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VIII of this Consent Decree.

36. Defendants shall bear the burden of proving (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.



## X. STIPULATED PENALTIES

37. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree (including Appendix B and the Restoration and Mitigation Work Plan incorporated therein), the Defendants shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

- |    |  |                 |
|----|--|-----------------|
| A. | For day 1 up to and including day 30 of non-compliance | \$1,000 per day |
| B. | For day 31 up to and including 60 of non-compliance    | \$2,000 per day |
| C. | For day 61 and beyond of non-compliance                | \$3,000 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued. The method of payment shall be in accordance with the provisions of Paragraph 42 below.

38. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VIII or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Section VIII.

39. The filing of a motion requesting that the Court resolve a dispute shall stay Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue to accrue from the first day of any failure or refusal to comply with any term or condition of this Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by Defendants as provided in this Section.

40. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 32 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

41. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.

42. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing USAO file number file number 2011V01517, EPA Region 1 and the DOJ case number 90-5-1-1-18622/1. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the District of Connecticut. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice of the payment to the United States and EPA, at the addresses specified in Section XI of this Decree.

43. The United States may, in its sole and unreviewable discretion, suspend, mitigate, or waive any stipulated penalty owed under this Section.

44. Nothing in this Decree, including but not limited to the provisions of this Section, shall be construed to preclude or limit the right of the United States to seek sanctions for contempt of this Decree or any order to enforce this Decree.

## XI. ADDRESSES

45. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. TO EPA:

- (1) Margery Adams  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, OES04-2  
Boston, MA 02114  
Adams.Margery@epa.gov
- (2) Denise Leonard and Mark Mahoney  
Wetlands Enforcement Section  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, OES05-1  
Boston, MA 02114  
Leonard.Denise@epa.gov  
Mahoney.Mark@epa.gov

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044  
Re: DJ #90-5-1-1-18622/1

IF VIA OVERNIGHT MAIL

601 D Street NW, Room 8000  
Washington, DC 20004

Lisa E. Perkins  
Assistant U.S. Attorney  
District of Connecticut  
450 Main Street, Room 328  
Hartford, CT 0610



D. TO DEFENDANTS:

William E. McCoy  
Heller, Heller & McCoy  
736 Norwich-New London Turnpike  
Uncasville, CT 06382  
hhm-bill@sbglobal.net

XII. COSTS OF SUIT

46. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendants for noncompliance with or enforcement of this Consent Decree.

XIII. PUBLIC COMMENT

47. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

48. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as *United States v. Guy B. Snowden, et al., Consent Decree -*

may be necessary or appropriate for construction or execution of this Consent Decree. Nothing in this Consent Decree shall be construed to preclude a remedy to cure a contempt found by the Court.

#### XV. MODIFICATION

49. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing. With the exception of modifications to the Restoration and Mitigation Work Plan prepared in accordance with Appendix B, any modification of this Consent Decree shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

#### XVI. TERMINATION

50. Except for the permanent injunction required by Paragraph 20, this Consent Decree may be terminated by either of the following:

A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or

B. Defendants may make a unilateral motion to the Court to terminate this Decree after each of the following has occurred:

1. Defendants have attained and maintained compliance with all provisions of this Consent Decree, including Appendix B and the Restoration and Mitigation Work Plan incorporated therein, and the CWA for twelve (12) consecutive months;

2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;

3. Defendants have certified compliance pursuant to subparagraphs 1 and 2 above to the Court and all Parties; and

4. within forty-five (45) days of receiving such certification from the Defendants, EPA has not contested in writing that such compliance has been achieved. If EPA disputes Defendants' full compliance, this Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
United States District Judge



ON BEHALF OF THE UNITED STATES:

Date: \_\_\_\_\_

IGNACIA S. MORENO  
Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice

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

Joshua M. Levin  
Senior Trial Attorney  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-4198

DAVID B. FEIN  
United States Attorney

Date: \_\_\_\_\_

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

Lisa E. Perkins  
Assistant U.S. Attorney  
District of Connecticut  
450 Main Street, Room 328  
Hartford, CT 06103-3022  
(860) 760-7958

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan Shinkman, Esq.  
Director, Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Date: \_\_\_\_\_

\_\_\_\_\_  
Mark Pollins, Esq.  
Director, Water Enforcement Division  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, OES04-2  
Boston MA 02114

Date: \_\_\_\_\_

\_\_\_\_\_  
Margery Adams  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100, OES04-2  
Boston MA 02114



FOR THE DEFENDANTS

Dated: \_\_\_\_\_

\_\_\_\_\_  
Guy B. Snowden

Dated: \_\_\_\_\_

\_\_\_\_\_  
Diane P. Snowden

Dated: \_\_\_\_\_

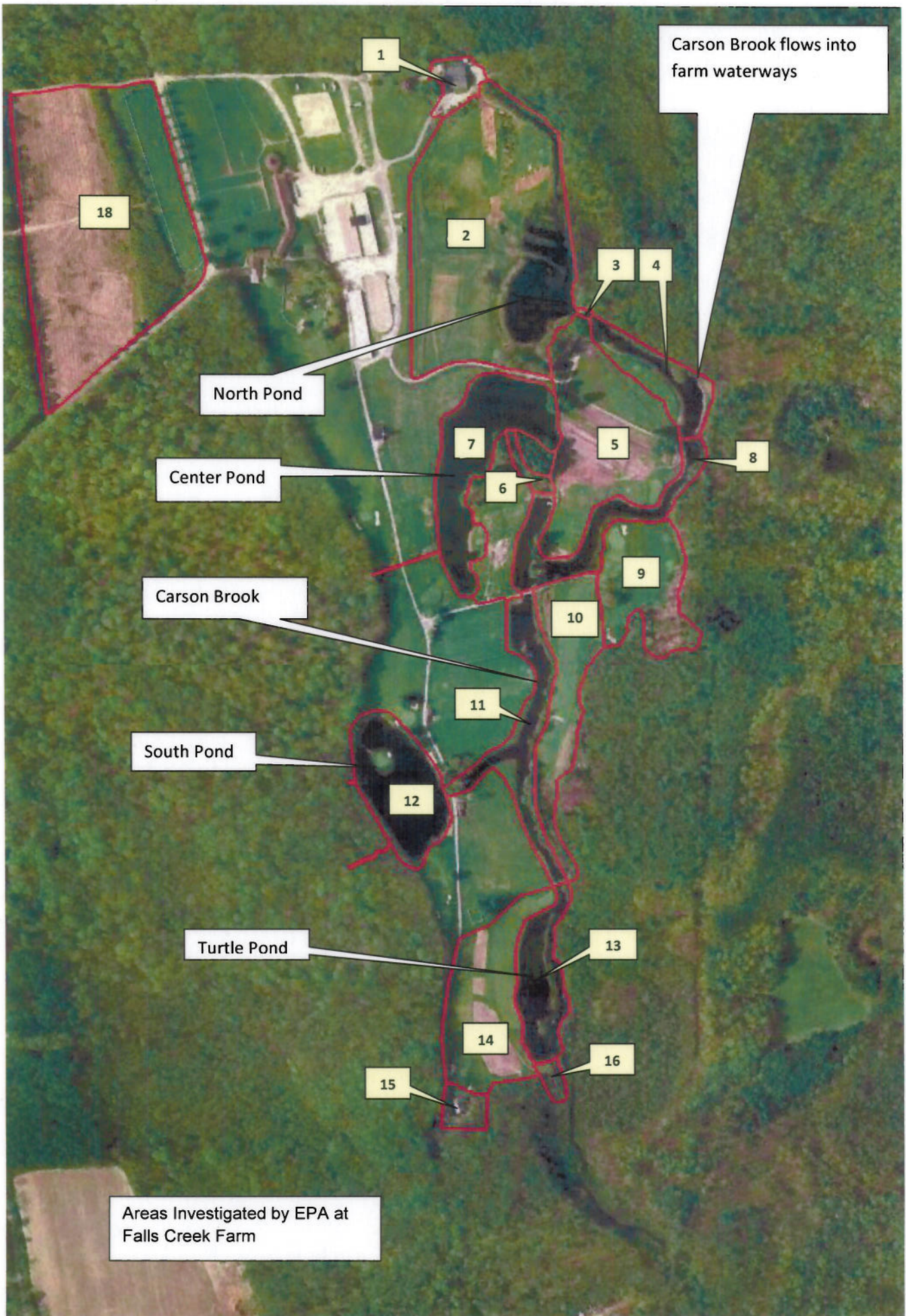
\_\_\_\_\_  
FCR Realty, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
Falls Creek Farm, LLC

Dated: \_\_\_\_\_

\_\_\_\_\_  
William E. McCoy, Esq.  
Heller, Heller & McCoy  
736 Norwich-New London Turnpike  
Uncasville, CT 06382  
(860) 848-1248



Carson Brook flows into farm waterways

18

1

2

3

4

North Pond

7

5

8

Center Pond

6

9

Carson Brook

10

South Pond

11

12

Turtle Pond

13

14

16

15

Areas Investigated by EPA at Falls Creek Farm



## APPENDIX B

### To Consent Decree

#### United States v. Guy Snowden, et al. (D. Conn.)

### SCOPE OF WORK FOR WETLAND RESTORATION AND COMPENSATORY MITIGATION

#### A. GENERAL PROVISIONS

This Appendix generally describes the activities comprising wetland restoration and mitigation projects referred to in Section V of the Consent Decree in the matter of United States v. Guy Snowden, et al. (D. Conn.) (the “Consent Decree”). It provides the requirements for the restoration, compensatory mitigation and monitoring work to be performed at Falls Creek Farm, 368 Bailey Road, Oneco, Connecticut. This project will restore and create approximately 11.32 acres of wetlands at Falls Creek Farm, 368 Bailey Road, in Oneco, Connecticut. The portions of the Farm subject to the restoration and mitigation requirements of this Appendix (“Restoration and Mitigation Areas”) are shown in Attachment 1 to this Appendix, and are presently used for a private golf course, agriculture, pasture, and open land.

1. The goal of the wetlands restoration and mitigation work (“Restoration and Mitigation Work”) shall be the successful re-establishment of natural wetlands, which is intended to include wet meadow, emergent wetlands, scrub/shrub wetlands and forested wetlands, in Areas 1, 2, 3, 4, 6, 9, 10, 11, 14, 15, and 16, as generally depicted in Attachment 1 to this Appendix B.

Engineering plans to implement the work described below are included in Attachment 3 to this Appendix.



- a. Area 1: Defendants shall remove the underground pipe under the gravel parking lot, and create a natural stream channel/swale to the east in order to reconnect the stream channel north of Area 1 to Center Pond. Defendants shall create/restore approximately 0.17 acres of scrub/shrub wetland adjacent to the re-routed natural stream/swale.
- b. Area 2: Defendants shall remove the culvert south of the Pack House, fill in the ditch in northern perimeter of Area 2, and grade the site to create approximately 4 acres of forested and scrub-shrub wetlands with a pit-and-mound topography (hummocks) similar to those in unaltered areas east of Carson Brook. Defendants shall seed and plant the wetlands areas to be re-established in accordance with the technical specifications set out in paragraph 3 of this section. An “island” of vegetated upland approximately 0.66 acres in size, where evergreen trees were grown in Area 2, may be maintained as upland. Defendants shall install groundwater monitoring wells at locations within Area 2 to monitor water levels as part of the evaluation of success. In addition, Defendants shall construct a level spreader structure to slow the flow of water from the existing stormwater outfall pipe, to dissipate energy and to control nutrients and runoff from the area northwest of Area 2.
- c. Area 3: Defendants shall remove the path adjacent to the weir so that it is no longer used as a crossing and shall remove the culverts. Defendants shall maintain the concrete weir so as to maintain sufficient water levels in North Pond to support successful re-establishment of wetlands in Area 1. Defendants shall repair and

reestablish the stream channel side slopes, and stabilize, restore and enhance approximately 0.08 acres of stream bank, including seeding and planting.

- d. Area 4: Defendants shall grade, stabilize, seed and plant to restore and enhance 0.03 acres of stream bank/wetlands on the channel leading from North Pond to Carson Brook.
- e. Area 6: Defendants shall remove the causeway/stream crossing in the channel between Center Pond and Carson Brook; an overflow pipe will be retained or, if necessary, constructed to maintain adequate water levels to support open water habitat in Center Pond. Defendants shall restore the stream channel in the crossing area and shall re-seed and (as necessary) plant shrubs on the banks sufficient to restore vegetation. Approximately 0.14 acres of stream bank and wetlands northwest of the crossing will be restored and enhanced through measures that may include, as necessary, recontouring, seeding and planting.
- f. Areas 9 and 10: Defendants shall remove the golf course in these areas, and regrade, seed and plant to establish a shrub-scrub/forested wetlands system of at least 3.56 acres. Approximately 0.12 acres shall be restored as wet meadow. The restored/created wetlands must be hydrologically connected to wetlands to the east of the disturbed area, and must be made a part of a continuous wetlands/uplands mosaic extending east from the cart path along Carson Brook. Defendants shall cap and stabilize the manure pile within Area 10 with low-permeability material, and shall install groundwater monitoring wells and establish surface monitoring points to monitor potential migration of nutrients or other pollutants from the manure pile into

Carson Brook or the adjacent wetlands. If adverse effects on Carson Brook or the adjacent wetlands are observed during the monitoring period, Defendants shall propose and, following EPA approval implement, additional measures to prevent the discharge of pollutants from the manure pile into those areas.

- g. Area 11: Defendants shall restore at least 0.94 acres of wetlands along the western bank of Carson Brook to provide a natural buffer between the remaining pasture area and Carson Brook. This work shall include grading, if appropriate, seeding and planting. In addition, Defendant shall install a water level control device (a weir) within Carson Brook to allow ponding during periods of low flow.
- h. Areas 14 and 15: Defendants shall block and disable the culvert adjacent to the chapel carrying flow from the stream west of the chapel to Carson Brook. Defendants shall direct the flow of this stream northward down a series of step pools and check dams along the west side of the road which borders Area 14, and then shall construct a culvert under the road, in order to direct flow to a sloped scrub-shrub/forested wetland of approximately 2.53 acres, to be restored and/or created in Area 14 adjacent to Turtle Pond, as generally depicted in Attachment 1. Defendants shall recontour (as necessary), seed and plant the wetland areas to be restored and created. Defendants shall remove the steel structure at the southern end of Turtle Pond and stabilize the area as necessary.
- i. Area 16: Defendants shall remove the golf teeing ground and path constructed in wetlands, regrade, and seed and plant as necessary to restore approximately 0.07 acres of scrub-shrub/forested wetlands.



2. Upon completion of the monitoring period, the restored and created/mitigated wetlands shall meet the federal wetland criteria outlined in the Corps of Engineers Wetlands Delineation Manual dated January, 1987, and current Corps of Engineers guidance as of the date of entry of the Consent Decree.

3. The following technical specifications shall be met for the work at the Falls Creek Farm Restoration and Mitigation Areas:

- a. After the completion of earthwork, the hydrology of the wetlands shall be sufficient to support wetland vegetation (i.e., saturated, or with groundwater within 12" of the surface for at least 14 days during the growing season). The goal of the restoration is to develop hydrology sufficient to sustain areas of forested, shrub-scrub, wet meadow, and emergent wetlands, as described in paragraph 1 above and shown in Attachment 1.
- b. All soils used for the planting media shall have a sufficient carbon content to support the establishment of wetlands vegetation (approximately 4-12% carbon, or 7-21 percent organic matter on a dry weight basis).
- c. All wetland Areas restored or created in accordance with this Restoration and Mitigation Project shall be seeded with a herbaceous wetland seed mixture.
- d. All appropriate erosion and sedimentation controls shall be implemented and maintained to prevent the transport of sediments and other pollutants off the Site, particularly into Carson Brook and downstream wetlands.
- e. Within the forested wetlands and shrub/scrub wetland classes, at least 500 total trees and shrubs per acre shall be planted. These shall be at least 18" tall at planting.
- f. Monitoring shall be conducted for five (5) full growing seasons following planting.
- g. After three (3) full growing seasons following seeding, eighty percent (80%) of the wet meadow, shrub/scrub wetlands, emergent wetlands, and forested wetlands, shall be established with hydrophytes (with a regional wetland indicator status of facultative, facultative-plus, facultative-wet or obligate, as defined in the National List of Plant Species that occur in Wetlands, Northeast (Region 1), dated 2012, published by the US Army Corps of Engineers.
- h. The wetlands shall not have more than 10% cover of invasive plant species at the end of the monitoring period.

4. The performance standards for the Falls Creek Farm Restoration and Mitigation Project are:

- a. Successful establishment of approximately 11.32 acres of freshwater wetlands.

- b. Technical documentation of the presence of wetland hydrology appropriate for the wetland classes established.
- c. Ninety-five percent (95%) overall areal cover of vegetation (except for open water).
- d. Successful control of non-native species, with less than 10% total areal coverage in vegetated areas by the end of the monitoring period.
- e. Wetlands that are planted shall have an eighty percent (80 %) coverage rate of hydrophytic plants (those with a regional indicator status of facultative, facultative-plus, facultative-wet or obligate as defined in the report entitled National List of Plant Species that occur in Wetlands, Northeast (Region 1), dated 2012 and published by the US Army Corps of Engineers. If the survival and coverage rates are not met one year prior to the last monitoring period, all necessary measures to ensure the level of survival and coverage by the end of the next growing season, including re-planting and re-grading if necessary shall be taken.
- f. An eighty percent (80%) establishment of native wetland plant species in each of the wetlands classes established (forested, shrub scrub, emergent and wet meadow).
- g. The restored, created/mitigated and existing wetland areas depicted on Attachment 2 shall be preserved in perpetuity.

B. WORK PLAN

1. Within thirty (30) calendar days of the entry of the Consent Decree, the Defendants shall provide to EPA a detailed Restoration and Mitigation Work Plan for performing the required work at the Falls Creek Farm Restoration and Mitigation Areas, and for performing the monitoring activities specified below. All provisions and specifications in the Restoration and Mitigation Work Plan shall conform, to the extent appropriate and applicable, to the U.S. Army Corps of Engineers-New England District Compensatory Mitigation Guidance, available at <http://www.nae.usace.army.mil/Regulatory/Mitigation/CompensatoryMitigationGuidance.pdf>. The Restoration and Mitigation Work Plan shall be designed to achieve the restoration goals for the Falls Creek Farm Restoration and Mitigation Areas described in Section A above and Attachment 1. The Restoration and Mitigation Work Plan shall provide that site work (including earth work, seeding and planting) shall be completed by October 15, 2014. Monitoring shall begin in Spring, 2015. Defendants may request extensions of these deadlines from EPA.



2. Monitoring and Reporting

The Restoration and Mitigation Work Plan shall include a monitoring program consistent, as appropriate and applicable, with the U.S. Army Corps of Engineers-New England District Compensatory Mitigation Guidance, to assess the success of the Restoration and Mitigation Work in relation to the goals set out above. The Monitoring Plan shall provide that Defendants shall, at minimum, submit to EPA the following reports:

i. Bi-Weekly Status Reports, provided every other week within a given month, shall be provided during the active construction phase of the project and shall include a description of work undertaken during the reporting period, a description of any problems encountered, and a description of and schedule for actions taken, or to be taken, to address problems encountered. Alternatively, status reports required under this section may be provided on any other schedule proposed by Defendants and accepted in writing (including via electronic transmission) by EPA.

ii. Annual Reports During the Construction Period. An annual report shall be provided by December 15 of each year in which active measures (i.e., non-monitoring activities) are being implemented describing the work conducted during the calendar year, problems encountered, and corrective measures taken in response to such problems. Such reports shall include photographs depicting the work and an overall qualitative vegetation assessment of the Restoration and Mitigation Areas.

iii. As-built plans. Within one month after completion of active construction measures, Defendants shall submit as-built plans to EPA.

iv. Annual Reports During the Monitoring Period. For each of the five growing seasons following construction, the Falls Creek Farm Restoration and Mitigation Area will be monitored. Documented (written and photographed) observations will occur at least two times during the growing season, once in late spring/early summer and again in late summer/early fall. Defendants shall submit annual monitoring reports to EPA by December 15 of each year, which shall include and describe all relevant information, including without limitation: all plant species present, along with their estimated relative frequency and percent cover; vegetation cover map; photographs showing all representative areas of the wetland restoration and mitigation; surface water and groundwater elevations; and wetland delineation data sheets (using the form approved for use by the Army Corps of Engineers) for each wetland cover type within the creation area. The Restoration and Mitigation



Areas must meet hydrological conditions for vegetated wetlands. Areas that are too wet or too dry should be identified in the monitoring reports along with suggested corrective measures. In addition, the monitoring reports shall address:

A. The data collected by monitoring wells or piezometers, shall be used to measure the natural hydrology (groundwater levels) during the growing season (and in Areas 9 and 10 to sample for nutrients and other pollutants), and permit the establishment of the desired wetland classes. Installation of these wells shall follow the Corps guidelines at: <http://el.ercd.usace.army.mil/wrap/pdf/tnwrap00-2.pdf>.

B. Invasive species. There shall be no more than 10% invasive plant species at the end of the monitoring period. Invasive species include, but are not limited to: Common reed (*Phragmites australis*); Purple loosestrife (*Lythrum salicaria*); Smooth and Common buckthorns (*Frangula alnus*, *Rhamnus cathartica*); Russian and Autumn olives (*Elaeagnus angustifolia* and *E. umbellata*); Multiflora rose (*Rosa multiflora*); Reed canary-grass (*Phalaris arundinacea*); and Japanese knotweed (*Fallopia japonica*); other species identified as a current or likely problem at the site. Control methods must be currently accepted methods for long-term eradication such as chemical control, or biological controls. See [www.epa.gov/NDPES/pubs/final\\_pgp.pdf](http://www.epa.gov/NDPES/pubs/final_pgp.pdf).

C. The annual monitoring report shall provide suggested remedial measures, if appropriate, and a proposed date by which such measures will be implemented. Should measures be required within two years of the end of the original monitoring period, the monitoring period will be extended to ensure two years of monitoring after the remedial work is completed.

iv. Final Report. A final assessment of the condition of the Falls Creek Farm Restoration and Mitigation Areas shall be performed by an independent wetland consultant following the final year of monitoring. To ensure objectivity, the wetland consultant or firm who prepared the annual monitoring reports shall not perform this assessment without prior approval from EPA. This assessment shall summarize the original or modified restoration and mitigation goals, discuss the level of attainment of these goals throughout the Restoration and Mitigation Areas, and describe significant problems and solutions during construction and maintenance (monitoring) of the restoration and mitigation sites.

C. EPA RESPONSE TO WORK PLAN

1. Within sixty (60) calendar days, if practicable, of receipt of the Restoration and Mitigation Work Plan or other item submitted to EPA for approval under this Appendix B, EPA shall in writing: (i) approve, in whole or in part, the Restoration and Mitigation Work Plan or other submission; (ii) approve, in whole or in part, the Restoration and Mitigation Work Plan or other submission, upon specified conditions; (iii) modify, in whole or in part, the Restoration and Mitigation Work Plan or other submission to cure deficiencies; (iv) disapprove, in whole or in part, the Restoration and Mitigation Work Plan or other submission, directing that the Defendants modify the submission; or (v) any combination of the above.

2. If the submission is approved, Defendants shall take all actions required by the submission in accordance with the schedules and requirements of the submission, as approved. If the submission is conditionally approved or approved only in part, Defendants shall, upon written direction from EPA, take all actions required by the approved submission that EPA determines are technically severable from any disapproved portions, subject to Defendants' right to dispute only the specified conditions or the disapproved portions, under Section D of this Appendix B.

3. If the submission is modified by EPA, Defendants shall take all actions required by the modified submission, unless Defendants dispute the modifications or portions thereof, in which case Defendants shall invoke the Dispute Resolution Provisions of Section F of this Appendix B for the disputed modifications.

4. If the submission is disapproved in whole or in part, Defendants shall, within 30 days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit the submission for approval, in accordance with the preceding Paragraphs, unless Defendants dispute the basis for the disapproval, in which case Defendants shall invoke the Dispute Resolution



provisions of Section F of this Appendix B. The 30-day period to cure applies only to deficiencies identified by EPA in accordance with this Paragraph. If the resubmission is approved in whole or in part, Defendants shall proceed in accordance with the preceding Paragraph.

5. If a resubmitted Restoration and Mitigation Work Plan, or portion thereof, is disapproved in whole or in part, EPA may again require Defendants to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to Defendants' right to invoke Dispute Resolution as provided in the preceding Paragraphs.

#### D. WORK PLAN DISPUTES

1. If the Defendants object to any of EPA's actions in response to the original or any revised Restoration and Mitigation Work Plan, or any other item submitted for approval as described in Section E, above, or if the Defendants or EPA object to any subsequently proposed modification of the approved Restoration and Mitigation Work Plan or submission, the Defendants and EPA shall employ the dispute resolution provisions set forth in the remainder of this Section. The procedures outlined in this Section shall constitute the Defendants' sole means of objecting to, or disputing, any response from EPA regarding the draft or any revised draft Restoration and Mitigation Work Plan, and shall constitute the Defendants' and EPA's sole means of objecting to or disputing any subsequent proposed modification of the approved Restoration and Mitigation Work Plan and items submitted for approval by EPA. Accordingly, the Dispute Resolution provisions contained in Section X of the Consent Decree do not apply to any objections or disputes described in this Section.



2. If the Defendants wish to invoke Dispute Resolution concerning the Restoration and Mitigation Work Plan or other item submitted to EPA for approval, the Defendants shall notify EPA in writing, at the addresses specified in Section XII of the Consent Decree, of their objection(s) within ten (10) business days of receipt of the disputed EPA comment, modification, disapproval, or other action. The Defendants' written notice ("Defendants' Objection Letter") shall describe the substance of the objection(s) and shall invoke this Section of Appendix B to the Consent Decree.

3. Upon EPA's receipt of the Defendants' Objection Letter, the parties shall conduct negotiations for up to ten (10) business days, during which time the Defendants have the right to meet with the appropriate Enforcement Office chief, or his or her designee, within EPA New England's Office of Environmental Stewardship; provided, however, that if said Chief or his or her designee is not available during that time, the 10 day period shall be extended for another 10 days to allow for a meeting. If there is no agreement at the conclusion of the ten day period, but both parties agree that further negotiation would be beneficial, the parties may agree to continue dispute resolution for a period of time specifically agreed to in writing by EPA and the Defendants.

4. Any mutual resolution reached by the parties pursuant to Paragraph F.3. above shall be incorporated in writing into the Restoration and Mitigation Work Plan and shall become effective without further action by the parties or the Court.

5. If the parties have not resolved the dispute by the conclusion of the dispute resolution period specified in Paragraph F.3. above (including any agreed-upon extensions), then the Enforcement Office Chief shall render a decision. Defendants shall abide by the decision of the Enforcement Office Chief, and such decision shall be incorporated in writing into the

Restoration and Mitigation Work Plan, and shall become effective without further action by the parties or the Court.

6. If EPA objects to any proposed modification made by the Defendants to the approved Restoration and Mitigation Work Plan or other submission, EPA staff shall notify the Defendants in writing of the objection(s) within ten (10) business days of receipt of the proposed modification. The notice (“EPA’s Objection Letter”) shall describe the substance of the objections and shall invoke this Section of Appendix B to the Consent Decree. Upon the Defendants’ receipt of EPA’s objection letter, EPA and the Defendants shall follow the procedures and requirements set forth in Paragraphs F.3. through F.5, above.

E. PERFORMANCE OF WORK AND MODIFICATION OF THE WORK PLAN

1. The Defendants shall carry out the wetland restoration and compensatory mitigation described in this Appendix B in accordance with the approved Restoration and Mitigation Work Plan and any subsequently incorporated modifications to it.

2. At any time after EPA approves the Restoration and Mitigation Work Plan, EPA or the Defendants may propose modifications to the approved Restoration and Mitigation Work Plan. Modifications may be incorporated into the Restoration and Mitigation Work Plan upon agreement of the parties and shall become effective under the Consent Decree without further action by the parties or the Court. The parties shall resolve any disputes regarding proposed modifications to the approved Restoration and Mitigation Work Plan, including but not limited to any disputes regarding any proposed modifications designed to attain and/or maintain any of the performance standards identified in this Appendix B, in accordance with the dispute resolution



procedures set out in Section F. above. Accordingly, the Dispute Resolution provisions in Section X of the Consent Decree do not apply to any disputes described in this Paragraph.

F. PRESERVATION AREA

1. Defendants shall take all reasonable efforts needed to establish a conservation easement to preserve wetlands and associated upland habitat at the location shown in Attachment 2 to this Appendix (the "Preservation Area"), with the purpose of ensuring that wetlands hydrology and that habitat of wetlands and associated uplands in the Preservation Area are permanently preserved. Use restrictions within the Preservation Area shall include restrictions on the building of structures and performance of farming activities; restrictions on the clearing of vegetation (other than for removal of dead wood and protection of human safety); restrictions on the draining of wetlands; and such other restrictions as may be necessary to achieve the purpose stated above. The Preservation Area consists of approximately 18.98 acres of wetlands and associated uplands habitat on the eastern edge of the Farm, adjacent to the Connecticut-Rhode Island state line, and includes approximately 3.56 acres of restored wetlands in Areas 9 and 10. Defendants' efforts to establish a conservation easement for the Preservation Area shall begin no later than the date scheduled for completion of the construction activities specified in Paragraph B.1., above, and shall continue until either (a) Defendants establish a conservation easement enforceable under Connecticut law in favor of a governmental entity or not-for-profit entity approved in writing by EPA and authorized to hold such interest pursuant to C.G.S.A §§ 23-5d or 47-42(c) ("Third-Party Easement Holder"), or (b) the Parties mutually agree that a conservation easement meeting the objectives of this Section is not feasible.

2. Defendants shall grant any conservation easement established under this Section in



a form enforceable under Connecticut law, and shall record such conservation easement within two months of EPA's approval of Defendants' designated Third-Party Easement Holder, unless the United States has agreed in writing to an extension of this time. At least one month prior to entering into any conservation easement, Defendants shall submit a draft conservation easement agreement to EPA for review and approval. Following approval by EPA, Defendants shall promptly record the final conservation easement and mail a copy of the final conservation easement to EPA within sixty (60) days of its recording.

3. Defendants shall agree to undertake the efforts described in Paragraph 1 for a minimum of six (6) months from the date scheduled for completion of the construction activities specified in Paragraph 1. If Defendants have been unable to identify a Third-Party Easement Holder acceptable to EPA, and/or otherwise conclude that the establishment of a conservation easement for the Preservation Area is infeasible, Defendants may request that EPA waive the requirement for a conservation easement for the Preservation Area. If EPA concurs at that time that Defendants have taken all reasonable efforts to establish such an easement, EPA agrees that Defendants may propose an alternative method, acceptable to EPA, to impose restrictions for the Preservation Area that run with the land, are valid pursuant to Connecticut law, and accomplish the purposes set forth in this Section. EPA shall confirm the parties' mutual agreement regarding the acceptability of any alternative method proposed by Defendants with prompt written notice. The parties agree that the purpose of any methods selected by Defendants, and approved by EPA, shall be to prevent any alterations to wetlands, and any impairment or interference with the conservation and water quality values of the Preservation Area. Defendants shall execute and record a certified copy of any document memorializing the restrictions agreed to by the parties under this Paragraph

within thirty (30) days from the date of Defendants' receipt of notice under this paragraph. In addition, in any permit application to the Town of Sterling Inland Wetland and Watercourses Commission, or in a permit application to any other permitting authority for approval of the restoration required by this Consent Decree, Defendants shall request that the permitting authority add a condition to its permit prohibiting alterations to the Preservation Area. If such conditions are included in any permit issued by the Town of Sterling Inland Wetland and Watercourses Commission, or another permitting authority, Defendants agree that they shall promptly record such permit in the land records in the Clerk's Office for the Town of Sterling.

4. Defendants hereby agree not to claim any funds expended in the creation of a conservation easement or deed restriction for the Preservation Area as a deductible business expense for purposes of Federal taxes.

#### List of Attachments

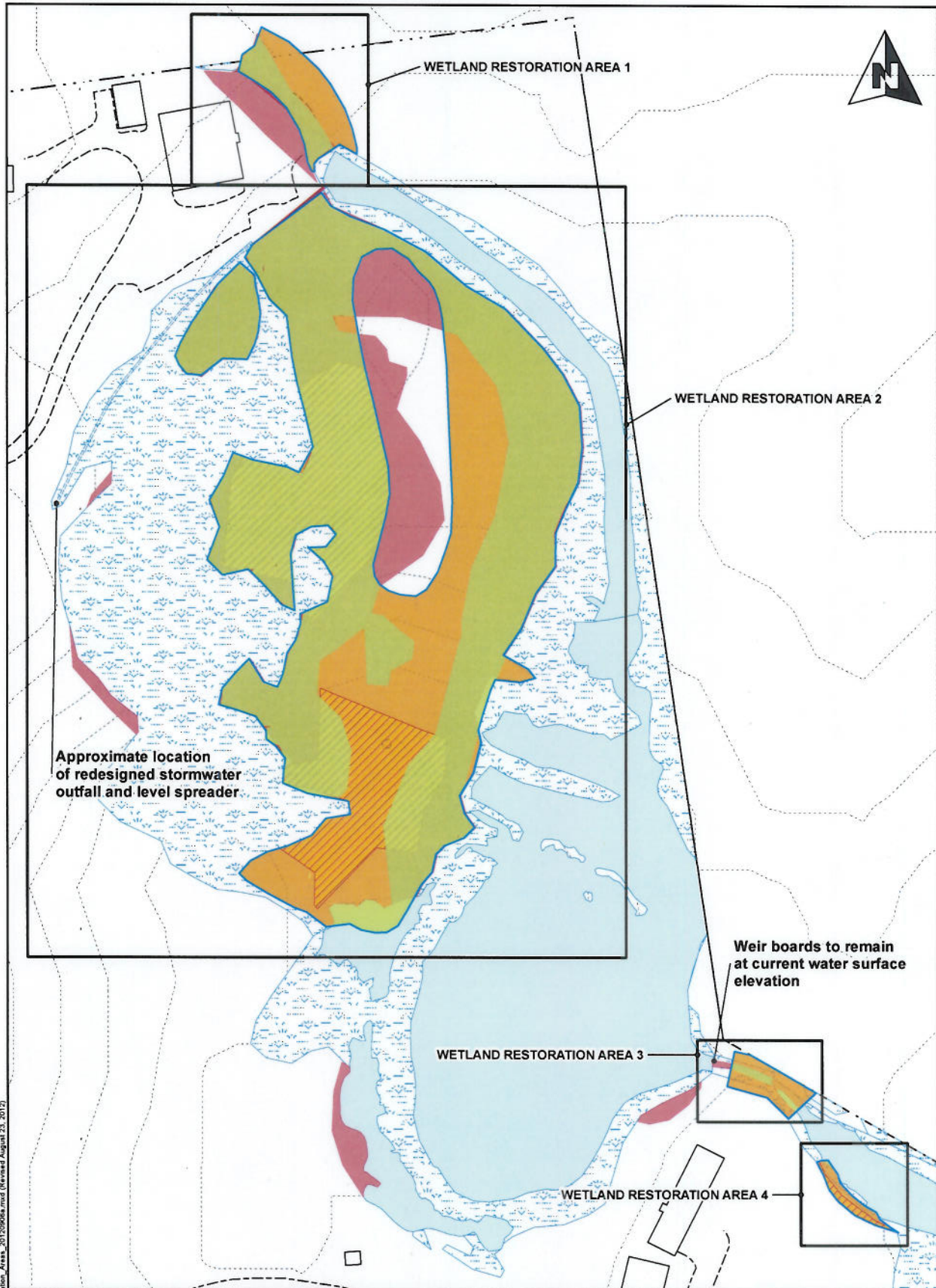
- Attachment 1: Generalized Maps of Wetland Restoration and Compensation. by Area
- Attachment 2: Map of Preservation Area
- Attachment 3: Detailed Wetland Restoration and Compensatory Mitigation Plans

**APPENDIX B**  
**ATTACHMENT 1**

**Generalized Wetland Restoration and Compensation by Area**

**United States. v. Guy Snowden et al.**





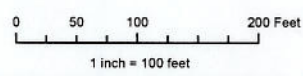
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FOR SETTLEMENT PURPOSES ONLY

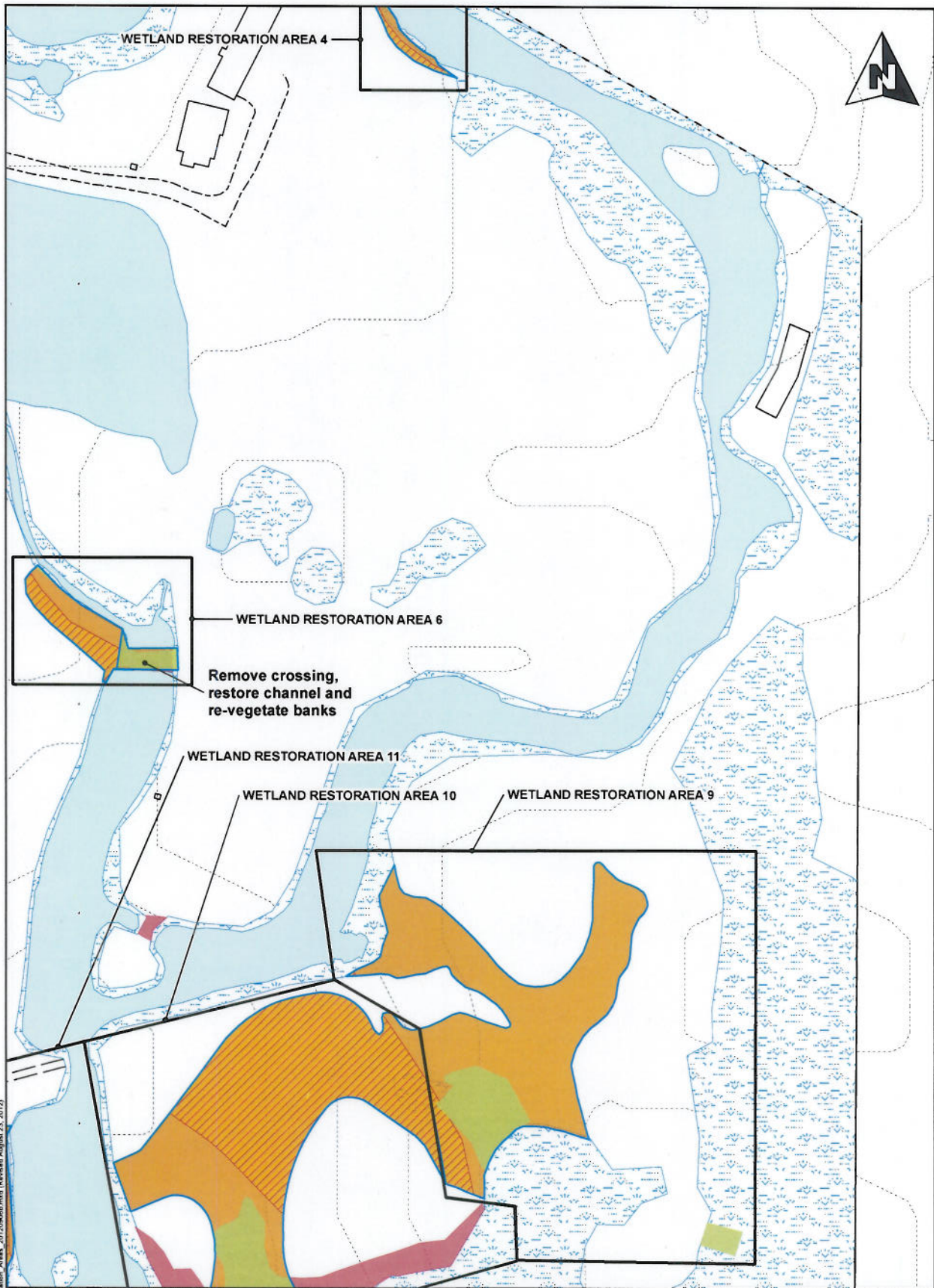
FIGURE 1A REVISED: September 11, 2012

- |                            |                            |                           |
|----------------------------|----------------------------|---------------------------|
| Proposed Wetland Limits    | 2008 Hydrology Lines       | Class D Property Boundary |
| Area of Restoration        | Perennial                  | Buildings                 |
| Fill by Defendant          | Intermittent               | Roads                     |
| Fill by Prior Owners       | Ditch                      | Contours (5 foot)         |
| Area of Fill Left in Place | Culvert                    |                           |
| Snowden                    | 2008 Wetlands/Watercourses |                           |
| Compensatory Mitigation    | Wetland                    |                           |
| Creation or Enhancement    | Stream                     |                           |
|                            | Pond                       |                           |

**GENERALIZED WETLAND RESTORATION AND  
COMPENSATION BY AREA**  
FALLS CREEK FARM  
ONECO, CT







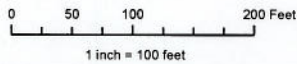
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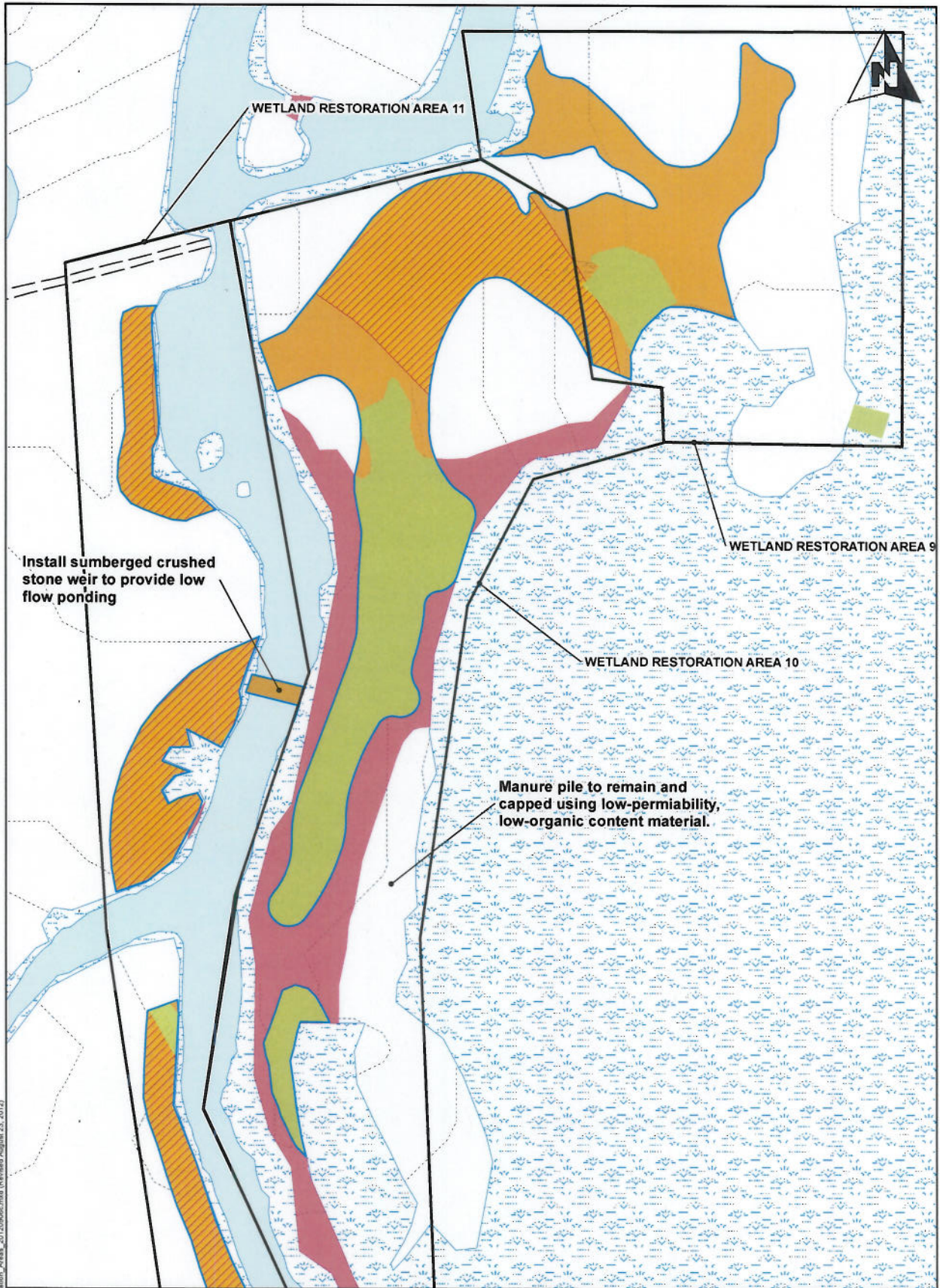
FIGURE 1B REVISED: September 11, 2012

- |                            |                            |                           |
|----------------------------|----------------------------|---------------------------|
| Proposed Wetland Limits    | 2008 Hydrology Lines       | Class D Property Boundary |
| Area of Restoration        | Perennial                  | Buildings                 |
| Fill by Defendant          | Intermittent               | Roads                     |
| Area of Fill Left in Place | Ditch                      | Contours (5 foot)         |
| Snowden                    | Culvert                    |                           |
| Compensatory Mitigation    | 2008 Wetlands/Watercourses |                           |
| Creation or Enhancement    | Wetland                    |                           |
|                            | Stream                     |                           |
|                            | Pond                       |                           |

**GENERALIZED WETLAND RESTORATION AND  
COMPENSATION BY AREA**  
FALLS CREEK FARM  
ONECO, CT





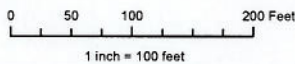


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FIGURE 1C REVISED: September 11, 2012

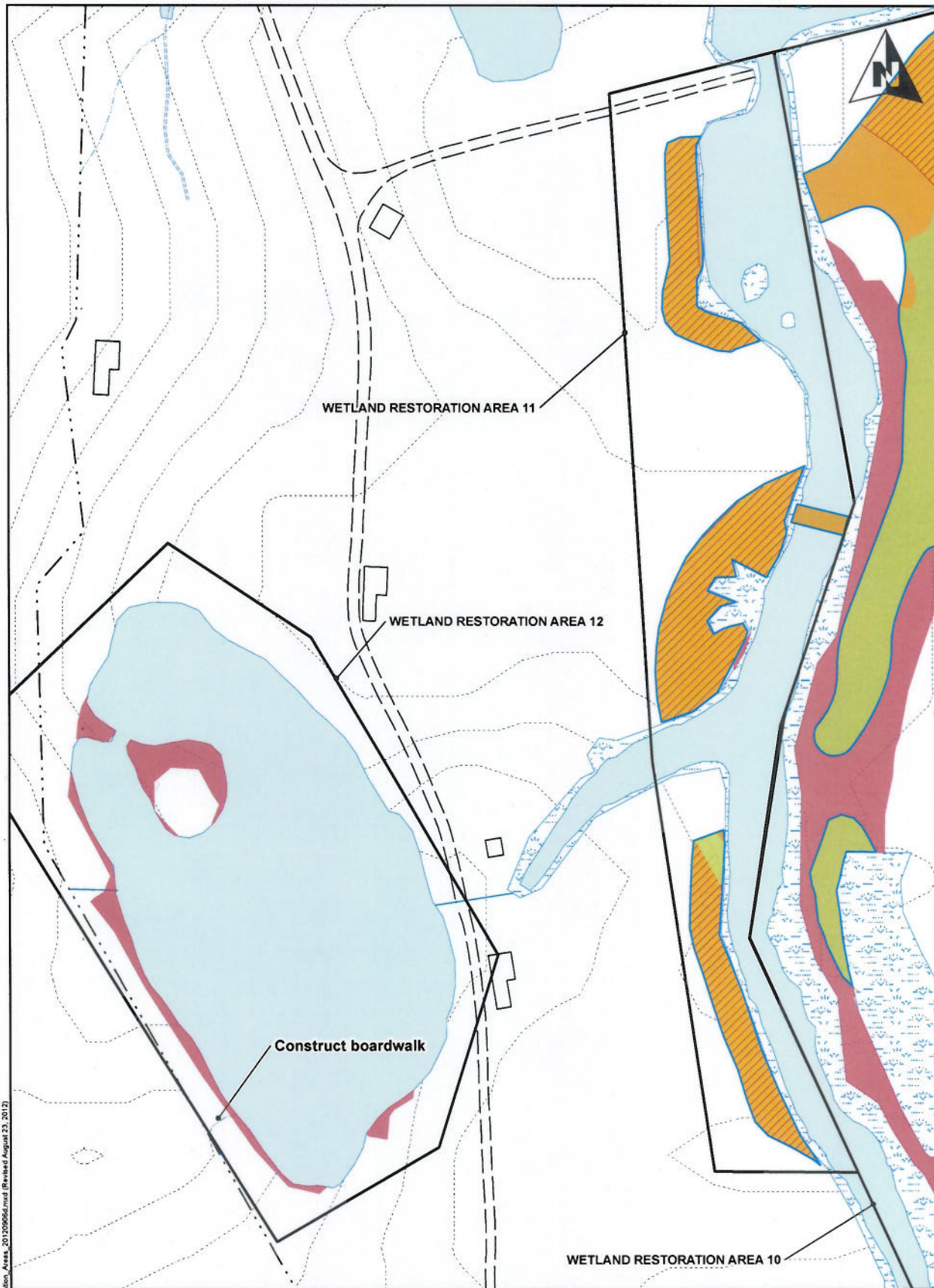
- |                            |                            |                           |
|----------------------------|----------------------------|---------------------------|
| Proposed Wetland Limits    | 2008 Hydrology Lines       | Class D Property Boundary |
| Area of Restoration        | Perennial                  | Buildings                 |
| Fill by Defendant          | Intermittent               | Roads                     |
| Area of Fill Left in Place | Ditch                      | Contours (5 foot)         |
| Snowden                    | Culvert                    |                           |
| Compensatory Mitigation    | 2008 Wetlands/Watercourses |                           |
| Creation or Enhancement    | Wetland                    |                           |
|                            | Stream                     |                           |
|                            | Pond                       |                           |



**GENERALIZED WETLAND RESTORATION AND  
COMPENSATION BY AREA**  
FALLS CREEK FARM  
ONECO, CT





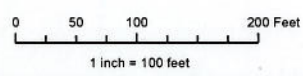


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FOR SETTLEMENT PURPOSES ONLY

FIGURE 1D REVISED: September 11, 2012

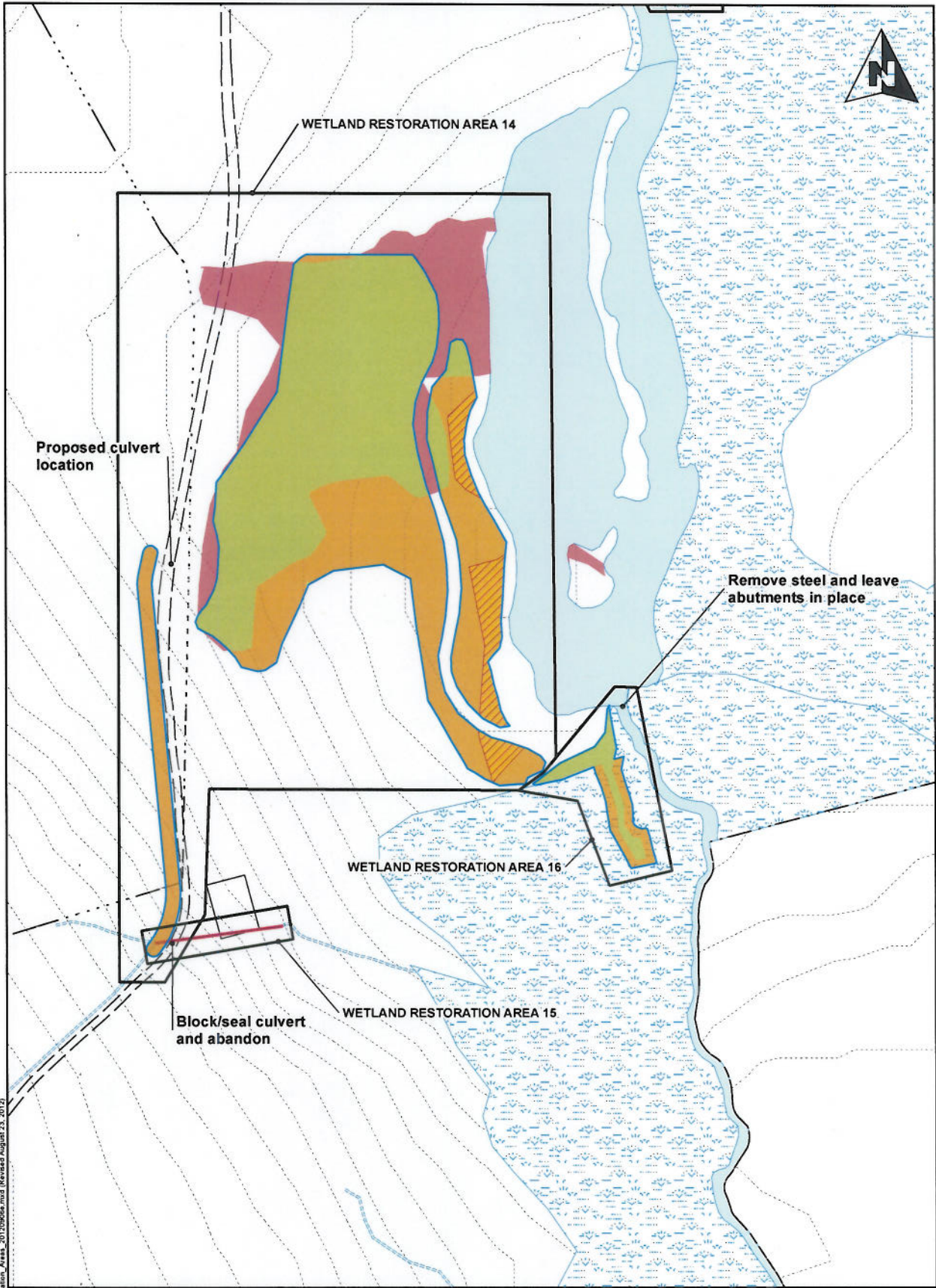
- |                            |                            |                           |
|----------------------------|----------------------------|---------------------------|
| Proposed Wetland Limits    | 2008 Hydrology Lines       | Class D Property Boundary |
| Area of Restoration        | Perennial                  | Buildings                 |
| Fill by Defendant          | Intermittent               | Roads                     |
| Fill by Prior Owners       | Ditch                      | Contours (5 foot)         |
| Area of Fill Left in Place | Culvert                    |                           |
| Snowden                    | 2008 Wetlands/Watercourses |                           |
| Compensatory Mitigation    | Wetland                    |                           |
| Creation or Enhancement    | Stream                     |                           |
|                            | Pond                       |                           |



**GENERALIZED WETLAND RESTORATION AND  
COMPENSATION BY AREA**  
FALLS CREEK FARM  
ONECO, CT





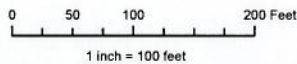


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FOR SETTLEMENT PURPOSES ONLY

FIGURE 1E REVISED: September 11, 2012

Proposed Wetland Limits	2008 Hydrology Lines	Class D Property Boundary
Area of Restoration	Perennial	Buildings
Fill by Defendant	Intermittent	Roads
Fill by Prior Owners	Ditch	Contours (5 foot)
Area of Fill Left in Place	Culvert	
Snowden	2008 Wetlands/Watercourses	
Compensatory Mitigation	Wetland	
Creation or Enhancement	Stream	
	Pond	



**GENERALIZED WETLAND RESTORATION AND  
COMPENSATION BY AREA**  
FALLS CREEK FARM  
ONECO, CT



**APPENDIX B**  
**ATTACHMENT 2**

**Map of Preservation Area**

**United States. v. Guy Snowden et al.**



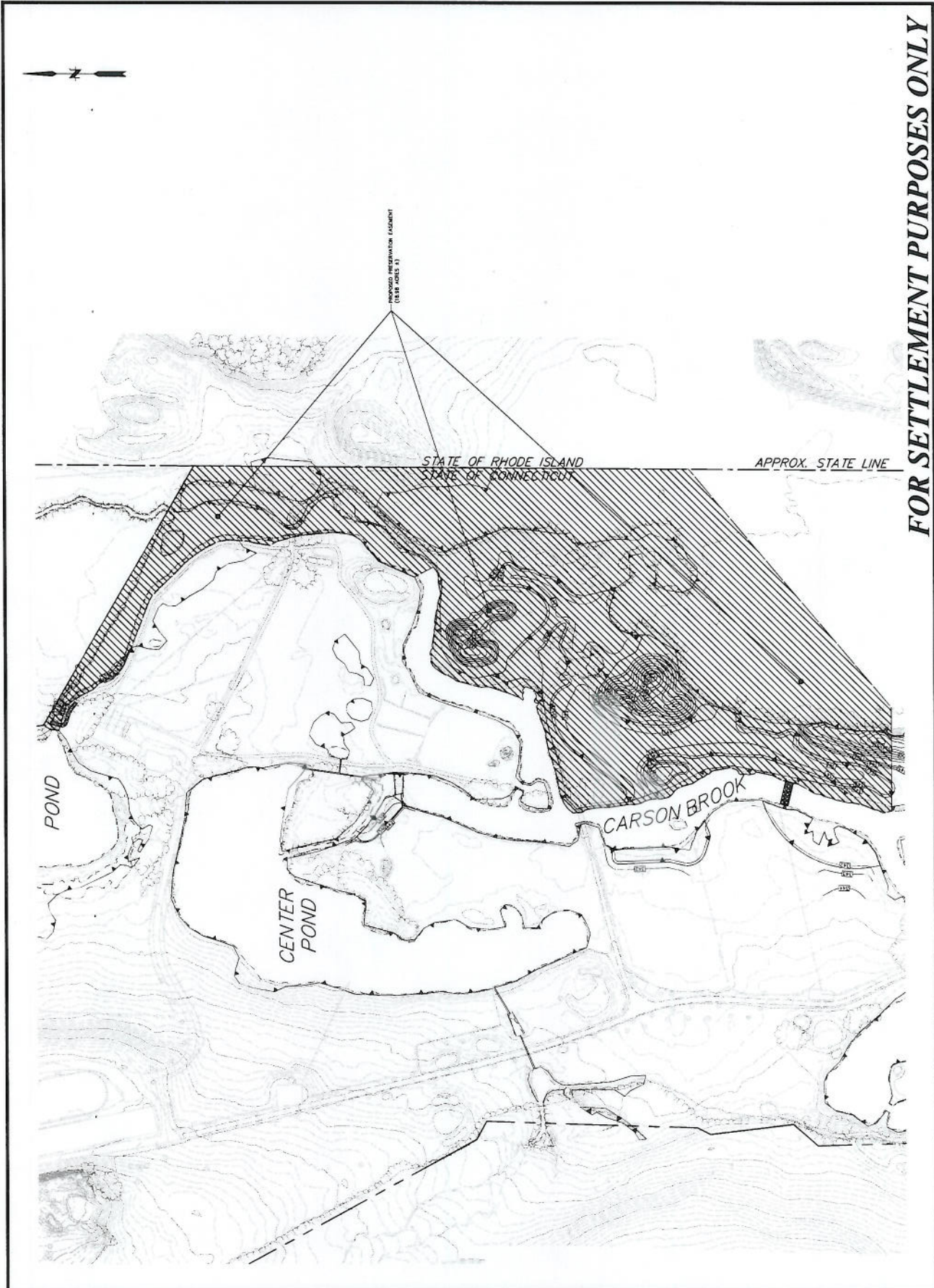
NO.	DATE	DESCRIPTION
1	8/1/2012	PLANS PREPARED
2	8/1/2012	REVISED FOR PERM AND SOL COMMENTS

DESIGNER	REVIEWER
MS	MS

**FUSS & O'NEILL**  
 186 HARTFORD ROAD  
 HARTFORD, CONNECTICUT 06105  
 www.fussandoneill.com

FALLS CREEK FARM INC.  
 PRESERVATION EASEMENT PLAN  
 BAILEY ROAD  
 CONNECTICUT

STERLING  
 PROJ. NO. 2007-030-A-1  
 DATE: MAY 2011  
**GI-402**

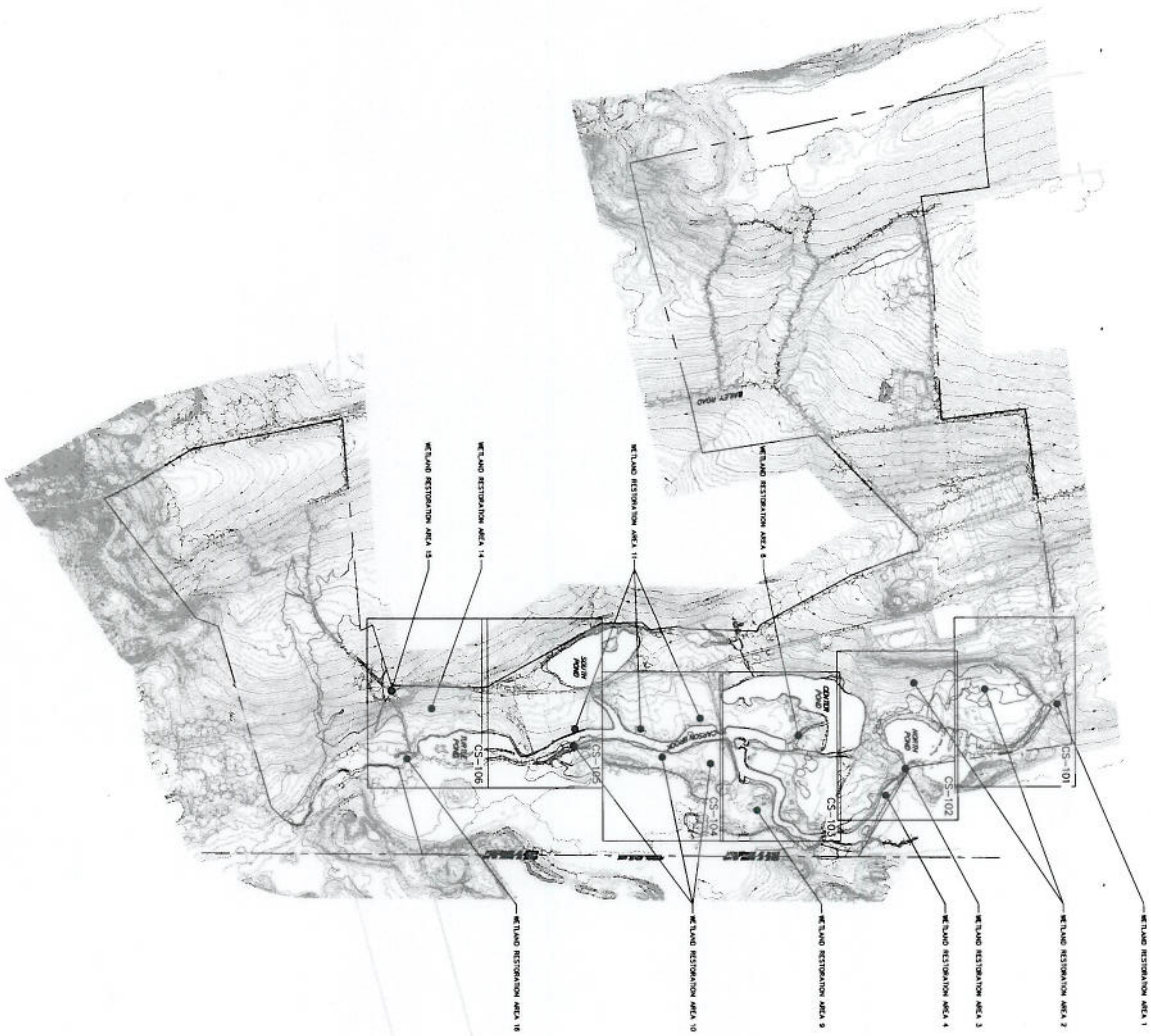


**FOR SETTLEMENT PURPOSES ONLY**

**APPENDIX B**  
**ATTACHMENT 3**

**Detailed Wetland Restoration and Compensatory Mitigation Plans**

**United States. v. Guy Snowden et al.**

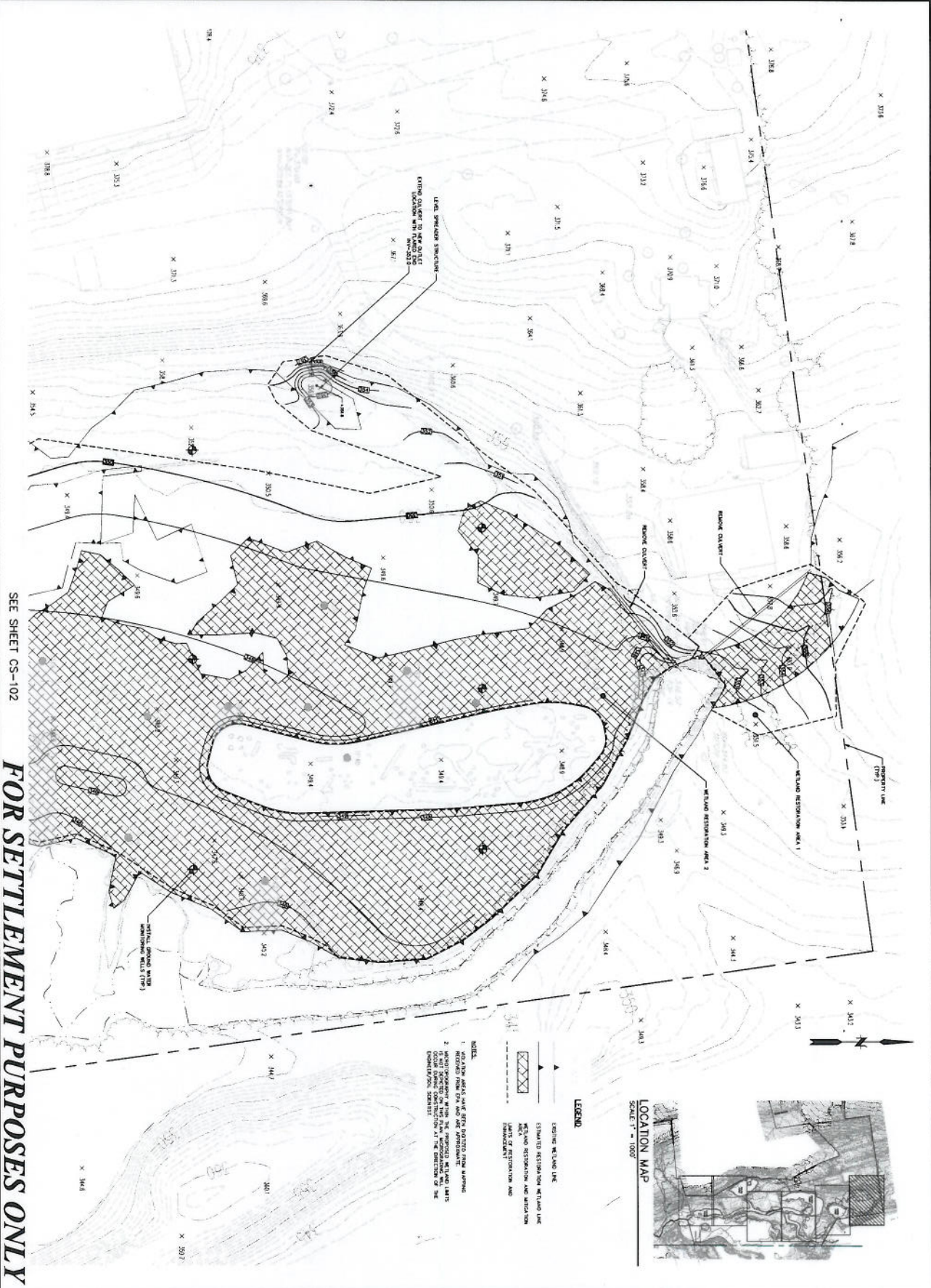


FOR SETTLEMENT PURPOSES ONLY



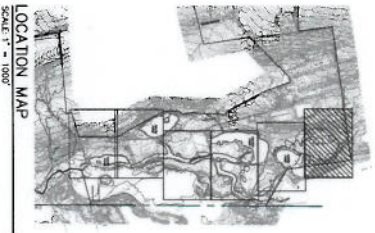
<b>G1-401</b>	<b>FALLS CREEK FARM INC.</b>  <b>KEY PLAN</b>  <b>BAILEY ROAD</b>  STERLING CONNECTICUT	 <b>FUSS &amp; O'NEILL</b> <small>146 HARTFORD ROAD          MANSFIELD, CONNECTICUT 06040          860-636-3348          www.fossco.com</small>	SCALE HORIZ: 1" = 400' VERT: 1" = 40' DATUM: NAD 83 HORIZ: NAD 83 VERT: NGVD 29 	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">NO.</th> <th style="width: 10%;">DATE</th> <th style="width: 45%;">DESCRIPTION</th> <th style="width: 10%;">DESIGNER</th> <th style="width: 10%;">REVIEWER</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>3/26/2012</td> <td>PLANS FINALIZED</td> <td>MMS</td> <td>JW</td> </tr> <tr> <td>2</td> <td>5/11/2012</td> <td>REVISED PER EPA AND DDJ COMMENTS</td> <td>MMS</td> <td>JW</td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	DESIGNER	REVIEWER	1	3/26/2012	PLANS FINALIZED	MMS	JW	2	5/11/2012	REVISED PER EPA AND DDJ COMMENTS	MMS	JW
NO.	DATE	DESCRIPTION	DESIGNER	REVIEWER															
1	3/26/2012	PLANS FINALIZED	MMS	JW															
2	5/11/2012	REVISED PER EPA AND DDJ COMMENTS	MMS	JW															





SEE SHEET CS-102

**FOR SETTLEMENT PURPOSES ONLY**



**LEGEND**

- EXISTING WETLAND LINE
- RESTORATION WETLAND LINE
- WETLAND RESTORATION AND MITIGATION AREAS

**NOTE:**  
 RESTORATION AREAS WERE DETERMINED FROM AERIAL PHOTOGRAPHY FROM 2007 AND ARE NOT TO BE CONSTRUED AS A FINAL DETERMINATION OF WETLAND BOUNDARIES.

CS-101

FALLS CREEK FARM INC.  
 WETLAND RESTORATION &  
 COMPENSATORY MITIGATION PLAN  
 BAILEY ROAD  
 STERLING CONNECTICUT

SCALE: HORIZ: 1" = 40'

VERT: 1" = 10'

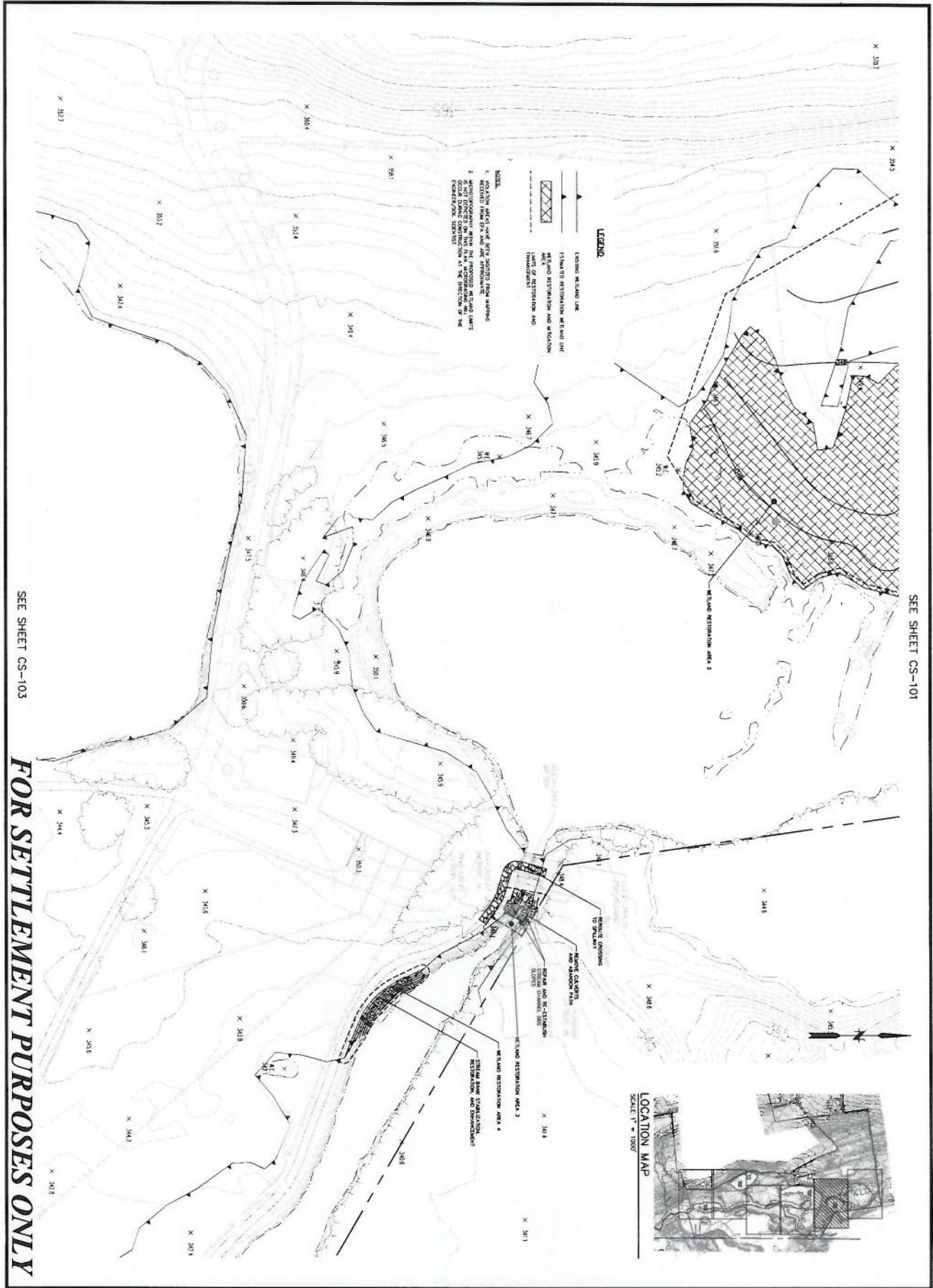
DATUM: NAD 83

VERT: NAVD 89

GRAPHIC SCALE: 0 20 40

No.	DATE	DESCRIPTION	DESIGNER	REVIEWER
3	9/11/2012	REVISED FOR EPA AND DGL COMMENTS	HOS	JW
1	9/9/2012	PLANS FINALIZED		





SEE SHEET CS-103

SEE SHEET CS-101

**FOR SETTLEMENT PURPOSES ONLY**

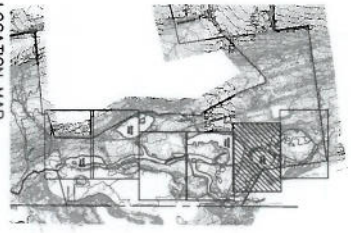
CS-102

FALLS CREEK FARM INC.  
 WETLAND RESTORATION &  
 COMPENSATORY MITIGATION PLAN  
 BAILEY ROAD  
 STERLING CONNECTICUT

**FUSS & O'NEILL**  
 146 HARTFORD ROAD  
 ALLENHURST, CONNECTICUT 06040  
 860.446.2448  
 www.fuss.com

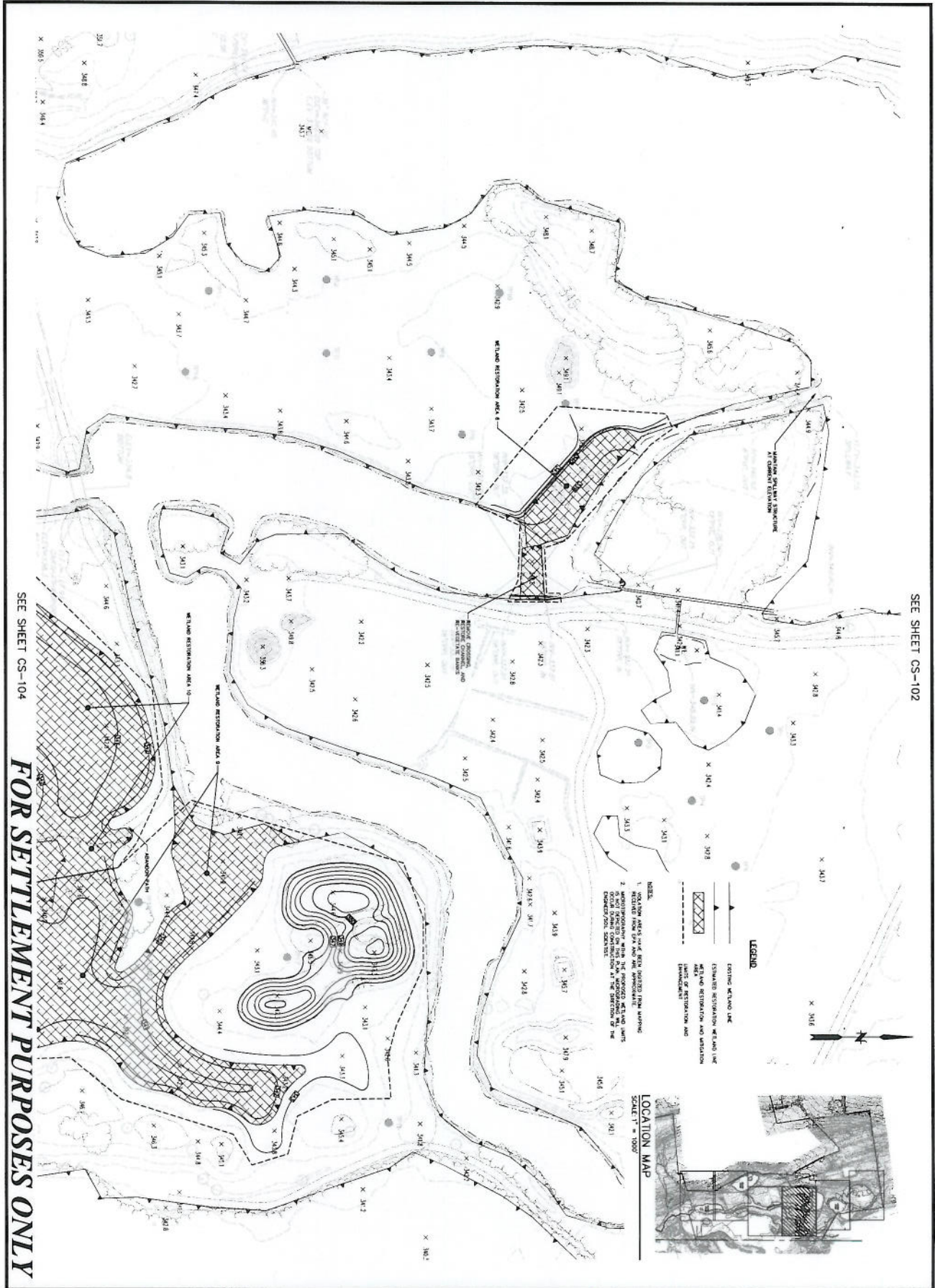
SCALE: HORIZ 1" = 40'  
 VERT 1" = 10'  
 DATUM: NAD 83  
 HORIZ: NAVD 83  
 VERT: NGVD 29  
 GRAPHIC SCALE

LOCATION MAP  
 SCALE 1" = 1000'



No.	DATE	DESCRIPTION	DESIGNER	REVIEWER
1	5/5/2015	PLANS FINALIZED	HSS	NW
2	5/11/2012	REVISED PER EPA AND DOI COMMENTS		






SEE SHEET CS-104

SEE SHEET CS-102

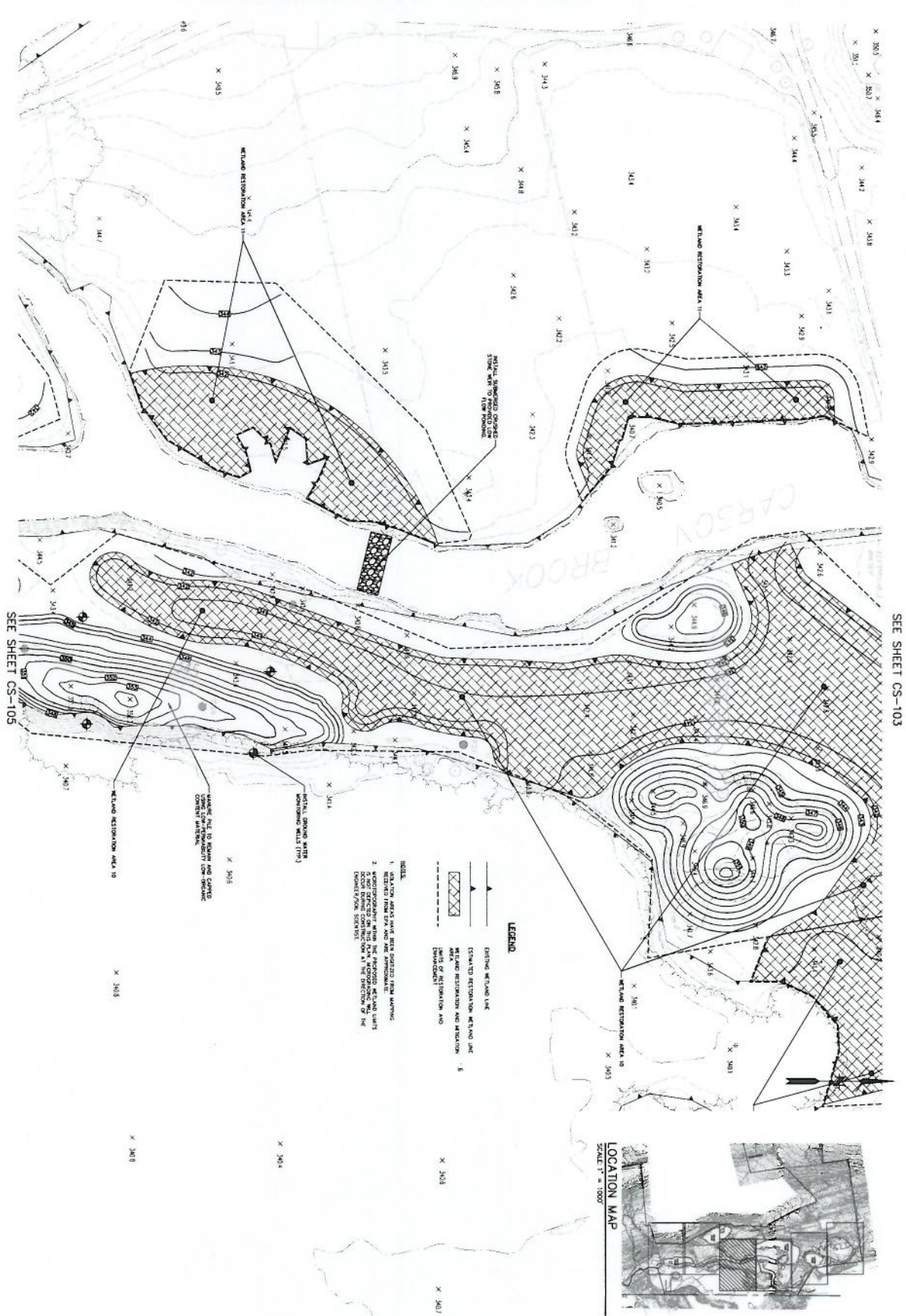
**FOR SETTLEMENT PURPOSES ONLY**

- LEGEND**
- EXISTING WETLAND LINE
  - ESTIMATED RESTORATION WETLAND LINE
  - WETLAND RESTORATION AND MITIGATION (HATCHED)
  - WETLAND RESTORATION AND MITIGATION (DOTTED)
- NOTES:**
1. EXISTING WETLAND LINE DERIVED FROM SURVEYING
  2. RESTORED FROM SPAN AND WAS APPROXIMATE
  3. WETLAND RESTORATION WITH THE PROPOSED WETLAND LINE (HATCHED) IS TO BE CONSTRUCTED AT THE DISCRETION OF THE ENGINEER/PLANNING DEPARTMENT.

**LOCATION MAP**  
SCALE: 1" = 3000'

<p><b>CS-103</b></p>	<p>FALLS CREEK FARM INC.  <b>WETLAND RESTORATION &amp; COMPENSATORY MITIGATION PLAN</b>                  BAILEY ROAD</p>	 <p><b>FUSS &amp; O'NEILL</b>                  146 HARTFORD ROAD                  BLAINHEIMER, CONNECTICUT 06040                  860.446.3400                  www.fussandoneill.com</p>	<p>SCALE                  HORIZ: 1" = 40'                  VERT: 1" = 20'</p>	<p>DATUM                  HORIZ: NAD 83                  VERT: NGVD 29</p>	
			 <p>GRAPHIC SCALE</p>		
<p>STERLING CONNECTICUT</p>					





**FOR SETTLEMENT PURPOSES ONLY**

SEE SHEET CS-105

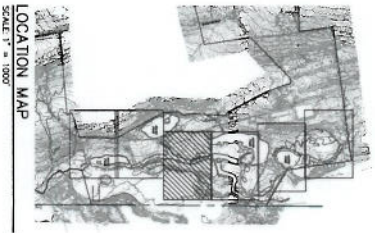
SEE SHEET CS-103

**LEGEND**

- EXISTING WETLAND LINE
- RESTORED WETLAND LINE
- WETLAND RESTORATION AND MITIGATION
- WETLAND RESTORATION AREA 1A
- WETLAND RESTORATION AREA 1B
- WETLAND RESTORATION AREA 1C
- WETLAND RESTORATION AREA 1D

**NOTES:**

- WETLAND RESTORATION AREAS ARE TO BE RESTORED TO ORIGINAL CONDITION.
- WETLAND RESTORATION AREAS ARE TO BE RESTORED TO ORIGINAL CONDITION AND TO BE MAINTAINED AS SUCH.
- WETLAND RESTORATION AREAS ARE TO BE RESTORED TO ORIGINAL CONDITION AND TO BE MAINTAINED AS SUCH.
- WETLAND RESTORATION AREAS ARE TO BE RESTORED TO ORIGINAL CONDITION AND TO BE MAINTAINED AS SUCH.



CS-104

FALLS CREEK FARM INC.  
 WETLAND RESTORATION &  
 COMPENSATORY MITIGATION PLAN  
 BAILEY ROAD  
 STERLING CONNECTICUT

**f FUSS & O'NEILL**  
 146 HARTFORD ROAD  
 MANCHESTER, CONNECTICUT 06040  
 861.646.2569  
 www.foss.com

SCALE  
 HORIZ: 1" = 40'  
 VERT: 1" = 10'  
 DATUM: NAD 83  
 HORIZ: NAD 83  
 VERT: NAVD 29

GRAPHIC SCALE

NO.	DATE	DESCRIPTION	DESIGNED	CHECKED	APPROVED
1	8/15/2012	REVISED PER EPA AND BOU COMMENTS			
2	8/15/2012	PLANS FINALIZED	HOS		JW





SEE SHEET CS-106 FOR SETTLEMENT PURPOSES ONLY

SEE SHEET CS-104

**CS-105**

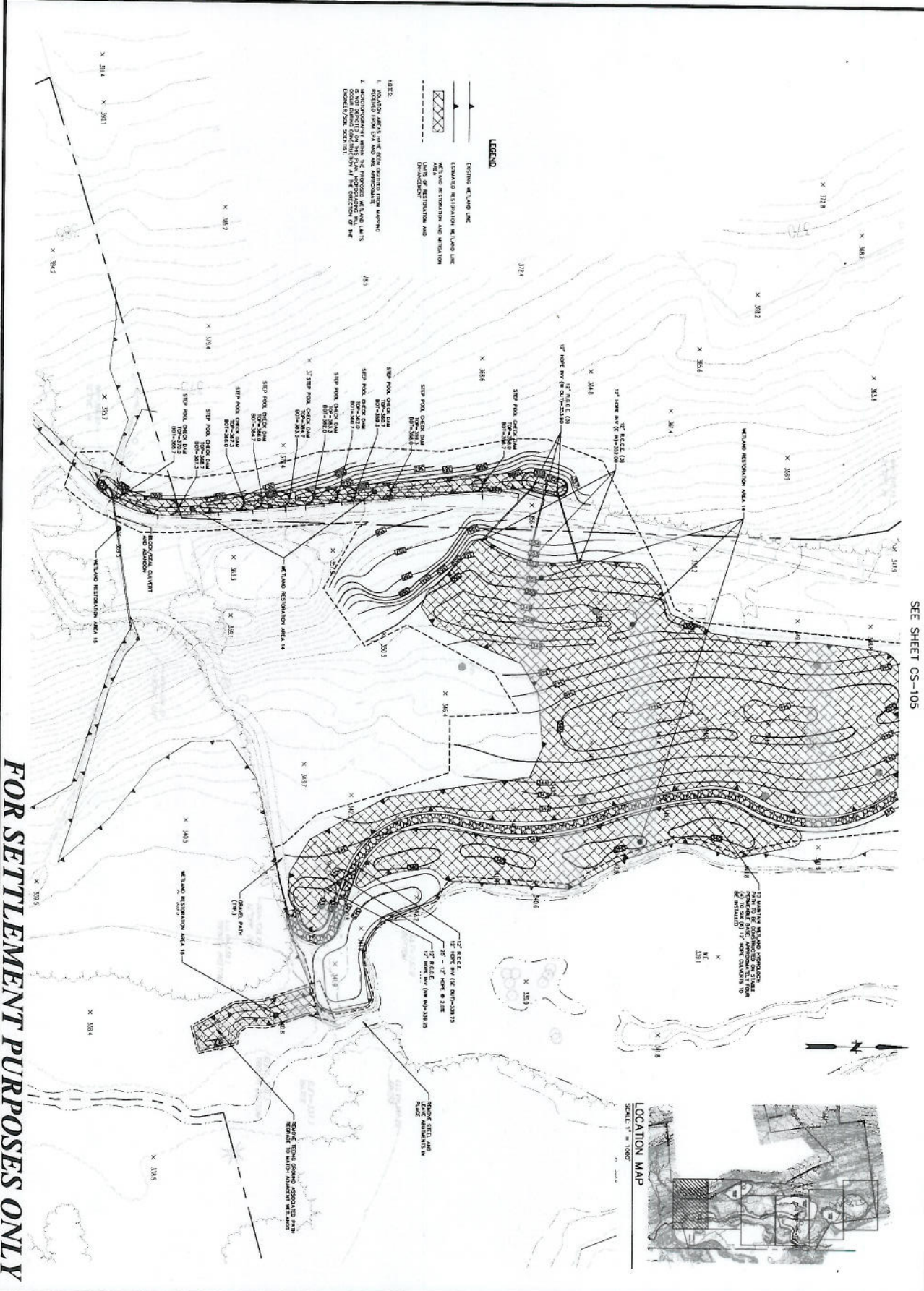
FALLS CREEK FARM INC.  
**WETLAND RESTORATION & COMPENSATORY MITIGATION PLAN**  
 BAILEY ROAD  
 STERLING CONNECTICUT

**FUSS & O'NEILL**  
 146 HARTFORD ROAD  
 MANSFIELD, CONNECTICUT 06040  
 860.446.2400  
 www.fuss.com

SCALE	HORIZ	1" = 40'
	VERT	1" = 20'
DATUM	HORIZ	NAD 83
	VERT	NVD 83

NO.	DATE	DESCRIPTION	DESIGNER	REVIEWER
1	8/7/2012	REVISED PER EPA TECHNICAL COMMENTS	KAY	KAY
2	8/9/2012	PLANS FINALIZED	HDS	JW
3	8/11/2012	REVISED PER EPA AND DOI COMMENTS	HDS	JW





**CS-106**

FALLS CREEK FARM INC.  
**WETLAND RESTORATION & COMPENSATORY MITIGATION PLAN**  
 BAILEY ROAD  
 STERLING CONNECTICUT

**FUSS & O'NEILL**  
 146 HARTFORD ROAD  
 BLOOMFIELD, CONNECTICUT 06044  
 860.446.2400  
 www.foss.com

**SCALE**

HORIZ: 1" = 40'  
 VERT: 1" = 10'  
**DATUM**

HORIZ: NAD 83  
 VERT: NGVD 29

40 20 0 40  
**GRAPHIC SCALE**

No.	DATE	DESCRIPTION	DESIGNER	REVIEWER
1	6/17/2012	REVISED PER EPA TECHNICAL COMMENTS	HDS	JW
2	6/26/2012	PLANS FINALIZED	HDS	JW
3	6/27/2012	REVISED PER EPA AND DOI COMMENTS	HDS	JW