

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:18-cv-02288-DCN
v.	)	
	)	
PAUL EDWARD MASHNI, <i>et al.</i> ,	)	
	)	
Defendants.	)	

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**NOTICE OF LODGING OF PROPOSED CONSENT DECREE**

Plaintiff, United States of America, through its undersigned attorneys and at the request of the Secretary of the United States Department of the Army, acting through the United States Army Corps of Engineers, hereby lodges with the Court a proposed Consent Decree (the “proposed Decree”), Attachment 1. The proposed Decree contains the terms of a proposed settlement of all claims in this action against Defendants.

**The proposed Decree should not be signed or entered by the Court at this time.**

Pursuant to 28 C.F.R. § 50.7, after the proposed Decree is lodged with the Court, the United States Department of Justice will submit a notice of the proposed Decree for publication in the Federal Register and will accept public comment on the proposed Decree for 30 days. After close of the public comment period, the United States will review any comments that are submitted and will move for entry of the proposed Decree, subject to 28 C.F.R. § 50.7 and paragraph 46 of the proposed Decree, which provide that the United States reserves the right to withhold or withdraw its consent to entry of the proposed Decree if comments indicate that it is inappropriate, improper, or inadequate.

January 26, 2022

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

UNITED STATES OF AMERICA

Plaintiff,

V.

PAUL EDWARD MASHNI, *et al.*,

Defendants.

No. 2:18-cv-02288-DCN

## CONSENT DECREE

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WHEREAS, Plaintiff United States of America, by the authority of the Attorney General, and at the request of the Secretary of the United States Department of the Army, acting through the United States Army Corps of Engineers, filed a Complaint in this action on August 17, 2018, alleging that Defendants, Paul Edward Mashni, PEM Residential, LLC, PEM Real Estate Group, LLC, Finish Line Foundation II, Inc., Kiawah River Farms, LLC, Kiawah River Excavating & Earthworks, LLC, KRF XSL, LLC, SC Investment Holdings, LLC, and SC Investment Holdings, LLC, violated and remain in violation of Sections 301(a) and 404 of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), 1344;

WHEREAS, the Complaint alleges that Defendants violated CWA Section 301(a) by discharging dredged or fill material into waters of the United States on real properties adjacent to, or near, Legareville Road and/or Gibbs Road in Charleston County, South Carolina (the “Legareville Site”), without authorization by the United States Army Corps of Engineers;

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

WHEREAS, this Court granted the motion of the United States and dismissed Defendants’ counterclaim, which sought a declaratory judgment that the Legareville Site and Edenborough Site do not involve directly or indirectly waters of the United States (ECF No. 22).

WHEREAS, this Court granted the motion of the United States and dismissed with prejudice Count II of the Complaint, alleging CWA violations at a separate site, known as the Edenborough Site (ECF No. 50);

WHEREAS, Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest; and

THEREFORE, before the taking of any trial testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION, VENUE, AND SUFFICIENCY OF COMPLAINT

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and over the Parties. Venue lies in this District pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 121, 1391(b) and (c) because the violations alleged in the Complaint are alleged to have occurred in this District; and the cause of action alleged herein arose in this District. For purposes of this Consent Decree, including any action to enforce this Decree, Defendants consent to the Court's jurisdiction over this Decree and any such action and over Defendants and consent to venue in this judicial district.

2. For purposes of this Consent Decree, including any action to enforce this Decree, the Parties agree, and the Court finds, that the Complaint states claims upon which relief may be granted pursuant to CWA Sections 301(a), 309(d), and 404, 33 U.S.C. §§ 1311(a), 1319(d), 1344.

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, and upon Defendants and any successors, assigns, or other persons otherwise bound by law.

4. In any action to enforce this Consent Decree, Defendants shall not raise as a defense the failure by any of its officers, directors, employees, agents, contractors, or consultants to take any actions necessary to comply with the provisions of this Consent Decree.

### III. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA and in effect at the time of Defendants' conduct in 2016 and 2017 shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Complaint" shall mean the complaint filed by the United States in this action on August 17, 2018 (ECF No. 1).

"Consent Decree" shall mean this Decree, the Appendices listed and all modifications made effective in accordance with Section XV.

"Corps" shall mean the United States Army Corps of Engineers and any of its successor departments or agencies.

"CWA" means the Clean Water Act, 33 U.S.C. §§ 1251-1388.

"Day" shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.

"Defendants" shall mean Paul Edward Mashni, PEM Residential, LLC, PEM Real Estate Group, LLC, Finish Line Foundation II, Inc., Kiawah River Farms, LLC, Kiawah River



Excavating & Earthworks, LLC, KRF XSL, LLC, SC Investment Holdings, LLC, and SC Investment Holdings, LLC.

“Effective Date” shall have the definition provided in Section XIII.

“Paragraph” shall mean a portion of this Decree identified by an arabic numeral.

“Parties” shall mean the United States and Defendants.

“Person” shall mean an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

“Section” shall mean a portion of this Decree identified by a roman numeral.

“Site” shall mean all of the real property associated with the Legareville Site, which as alleged in the Complaint comprises approximately 93 acres in the aggregate and includes Charleston County parcels with Tax Map Sequence (“TMS”) numbers 273-00-00-041, -040,<sup>1</sup> -072, -034, -033, -032, -084, -083, -108, -150, -106, -027, -125, -126, -107, -082, -028, -085, and -035. The Site is adjacent to, or near, Legareville Road and/or Gibbs Road in Charleston County, South Carolina. The Site is illustrated in Appendix A to the Complaint and includes the 14.92 acres of allegedly impacted jurisdictional wetlands that are identified in the United States expert report dated September 13, 2019 as depicted in Figure 23 in Appendix A.

“United States” shall mean the United States of America.

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<sup>1</sup> The inclusion of TMS numbers -044 and -045 in the Complaint was a scrivener’s error. These parcels are not represented in Exhibits A and B to the Complaint.

#### IV. RESERVATIONS AND COVENANTS

6. This Consent Decree fully resolves the claims of the United States against Defendants alleged in Count I of the Complaint with respect to the Site, ECF No. 1, with prejudice, subject to Defendants' compliance with this Consent Decree.

7. This Consent Decree also resolves the claims of Defendants Finish Line Foundation II, Inc., KRF XSL, LLC, and SC Investment Holdings, LLC, in *Finish Line Foundation II, Inc. v. United States Army Corps of Engineers*, No. 2:18-cv-01727-DCN (D.S.C.) which Defendants Finish Line Foundation II, Inc., KRF XSL, LLC, and SC Investment Holdings, LLC have since dismissed without prejudice. Upon the Effective Date of this Consent Decree, that prior dismissal without prejudice shall be deemed to be *with* prejudice (with each side to bear its own fees and costs). Within ten (10) Days of the Effective Date of this Consent Decree, Defendants shall file a notice of dismissal with prejudice in Civil Action No. 2:18-cv-01727-DCN (D.S.C.). Promptly following the Effective date of this Consent Decree, Defendants shall file a motion for voluntarily dismissal with prejudice (with each side to bear its own fees and costs) CA4 Appeal No. 21-1484. Further, promptly following the Effective Date, Defendants shall withdraw without prejudice any and all pending JD requests in the District of South Carolina.

8. This Consent Decree also resolves any counterclaims of Defendants, which the Court has since dismissed (ECF No. 22). Upon the Effective Date of this Consent Decree, the Court's dismissal of Defendants' counterclaims shall be deemed to be with prejudice (with each side to bear its own fees and costs).

9. 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.

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

11. This Consent Decree is not and shall not be interpreted to be a permit or modification, verification, or application of any existing permit issued pursuant to any federal, state, or local laws or regulations. Defendants are responsible for compliance with all applicable federal, state, and local laws, regulations, and permits, and Defendants' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke, verify the applicability of, or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the United States Environmental Protection Agency's ability to exercise its authority pursuant to CWA Section 404(c), 33 U.S.C. § 1344(c). And nothing in this Consent Decree shall alter governing law or processes associated with CWA jurisdictional determinations.

12. This Consent Decree does not affect 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 this Consent Decree and applicable law. This Consent Decree shall not be construed to limit the rights of the United States to obtain remedies under the CWA or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 6 of this Consent Decree.

14. Except as provided in Section I of this Consent Decree, nothing in this Consent Decree shall constitute an admission of fact or law by any party.



V. REMEDIAL PROVISIONS

a. CIVIL PENALTY

15. Within thirty (30) Days after the Effective Date of this Consent Decree, Defendants shall pay the sum of \$525,000 as a civil penalty to the United States.

16. Defendants shall pay the civil penalty due to the United States in accordance with written instructions to be provided to Defendant by the United States Department of Justice following entry of this Consent Decree. Upon payment, Defendants shall provide written notice to the United States at the addresses specified in Section XII.

17. Defendants shall not deduct any penalties paid under this Decree pursuant to this Section or Section VIII in calculating their federal income tax.

b. INJUNCTIVE RELIEF

18. Mitigation. Within thirty (30) Days of the Effective Date of this Consent Decree, Defendants shall purchase a total of 70 freshwater wetland restoration or enhancement mitigation credits from the Palmetto Umbrella Mitigation Bank—Big Run Mitigation Site. Within thirty (30) Days of such credit purchase, Defendant shall provide written notice to the United States at the addresses specified in Section XII.

VI. REPORTING REQUIREMENTS

19. Notification. Prior to engaging in any earthmoving activities on the Site, Defendants shall hereafter provide notice and a short description of such activities to the Corps at least sixty (60) Days prior to beginning such activities. The Parties agree to informally confer within sixty (60) days of said notice as to whether such activities require a permit under the CWA and/or Rivers and Harbors Act. The Parties maintain all of their respective rights and defenses

with respect to such activities. This obligation shall survive termination of the other provisions of this Decree.

20. The requirements of this Consent Decree do not relieve Defendants of any reporting obligations required by the CWA or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

#### VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

21. This Consent Decree does not affect any other rights of entry and inspection, or any rights to obtain information, held by the United States pursuant to applicable federal laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

#### VIII. STIPULATED PENALTIES

22. Defendants shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section X (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any required reporting notice, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

23. Stipulated penalties shall accrue in the amount of \$500 per Day.

24. Stipulated penalties under this Section shall begin to accrue on the Day a violation occurs and shall continue to accrue until the violation ceases.

25. Except as provided in Paragraph 34 below, Defendants shall pay any stipulated penalties within thirty (30) Days of receiving the United States' written demand. Defendants shall



make any such payment in accordance with written instructions to be provided by the United States. Upon such payment, Defendants shall provide written notice to the United States at the addresses specified in Section XII of this Consent Decree.

26. The United States, at its discretion, may waive or reduce any stipulated penalties that accrue under this Consent Decree.

27. Any disputes concerning the amount of stipulated penalties or the underlying violation that gives rise to the assessment of stipulated penalties are subject to the Dispute Resolution provisions in Section IX. Stipulated penalties and any applicable interest shall continue to accrue as provided in this Consent Decree, but need not be paid until the following:

a. If the dispute is resolved by agreement between the Parties, Defendants shall pay the amount due under such agreement, together with any applicable interest, to the United States within thirty (30) Days of the effective date of the agreement.

b. If the dispute is taken to the Court, Defendants shall pay all accrued penalties determined by the Court to be owing, together with any applicable interest, to the United States within thirty (30) Days of receiving the Court's decision, except as provided in subparagraph c, below.

c. If any party appeals the Court's decision to the Court of Appeals (or beyond), Defendants shall pay all accrued penalties determined to be owing, together with any applicable interest, to the United States within fifteen (15) Days of receiving the final appellate decision.

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

The stipulated penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law.

#### IX. DISPUTE RESOLUTION

29. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section ("Dispute Resolution") shall be the exclusive mechanism for Defendants to resolve all of their disputes arising under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute under this Section shall preclude Defendants from raising any such issue as a defense to an action by the United States to enforce any obligation of Defendants arising under or with respect to this Consent Decree.

30. Any dispute Defendants have that is subject to Dispute Resolution shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendants send the United States a written Notice of Dispute, pursuant to Section XII. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed twenty-one (21) Days from the date the dispute arises, unless that period is modified in writing by the United States. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) Days after the conclusion of the informal negotiation period, Defendants file with the Court a motion for judicial resolution of the dispute.

31. In any dispute submitted to the Court for resolution pursuant to this Section, Defendants shall have the burden of proving by a preponderance of evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that Defendants' position will achieve compliance with the terms of this Consent Decree and the CWA.

32. The invocation of Dispute Resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendants under this Consent Decree. Stipulated penalties and interest, if applicable to the disputed matter, shall continue to accrue from the first Day of violation, but payment shall be stayed pending resolution of the dispute as provided in Section IX. If Defendants do not prevail on the disputed issue, stipulated penalties, and interest, if applicable, shall be assessed and paid as provided in Section VIII.

#### X. FORCE MAJEURE

33. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendants, of any person controlled by Defendants, or of Defendants' contractors or consultants that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation.

34. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendants shall provide notice to the United States, at the addresses specified in Section XII, within a reasonable time after Defendants first knew or should have known that the event might cause a delay. Defendants shall also provide an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay



or the effect of the delay; Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a defense; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any written notice required by this Section all available documentation.

35. If the United States agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event may be extended for such time as is necessary to complete those obligations.

36. If the United States does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree to the extension of time sought by Defendants, then Defendants may invoke Dispute Resolution under Section IX of this Consent Decree.

37. If Defendants invoke Dispute Resolution under Section IX of this Consent Decree, Defendants shall have the burden of demonstrating that the delay or anticipated delay has been or will be caused by a force majeure event; the number of Days of delay or anticipated delay that was or will be caused by such force majeure event; that the duration of the delay or the extension sought was or will be warranted under the circumstances; that Defendants could not have foreseen and prevented such delay; that Defendants exercised best efforts to prevent, avoid, minimize and mitigate the delay and its effects; and that Defendants complied with the requirements of this Section.

XI. COSTS

38. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendants.

XII. NOTICES

39. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the United States:

Johanna C. Valenzuela  
Assistant U.S. Attorney  
District of South Carolina  
1441 Main Street, Suite 500  
Columbia, SC 29201  
(803) 929-3122  
Johanna.Valenzuela@usdoj.gov

As to the Corps:

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Deputy District Counsel  
Office of Counsel  
U.S. Army Corps of Engineers  
Charleston District  
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Charleston, SC 29403  
(843) 329-8176  
james.f.choate@usace.army.mil

As to Defendants:

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520-869-5836 (mobile)  
520-844-6215 (efax)  
hbeigel@me.com

Paul Mashni  
5050 N. 40th Street,  
Suite 300  
Phoenix, AZ 85018  
480-544-6975

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

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

### XIII. EFFECTIVE DATE

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

#### XIV. RETENTION OF JURISDICTION

43. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections IX and XV, or effectuating or enforcing compliance with the terms of this Decree.

#### XV. MODIFICATION

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

45. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 31, the Party seeking the modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(h).

#### XVI. PUBLIC PARTICIPATION

46. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendants consent to entry of this Consent Decree without further notice and agree not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Decree.



#### XVII. TERMINATION

47. After Defendants have completed the requirements of Paragraphs 7 and 8 and Section V (i.e., Civil Penalty and Injunctive Relief), the Parties agree to file a Request to Terminate this Consent Decree. The United States shall prepare and file a Stipulation and Proposed Order in the form illustrated in Appendix B. This Agreement constitutes consent by Defendants for the United States to file the Stipulation without further execution of the Stipulation document.

#### XVIII. SIGNATORIES/SERVICE

48. Each undersigned representative of Defendants and the United States Attorney for the District of South Carolina certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

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

#### XIX. INTEGRATION

50. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. The Parties acknowledge that there are no representations,



agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XX. FINAL JUDGMENT

51. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Parties waive any rights to appeal such final judgment. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

APPENDICES

52. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is Figure 23 of the United States Expert Report, dated September 13, 2019.


“Appendix B” is a draft Stipulation to Terminate Consent Decree.

Dated and entered this \_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

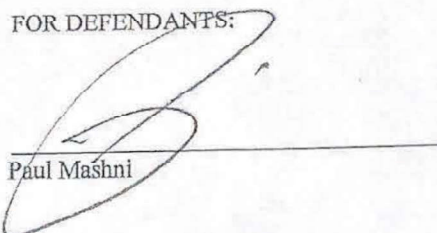
FOR THE UNITED STATES OF AMERICA:

26 Jan. 2022  
Date

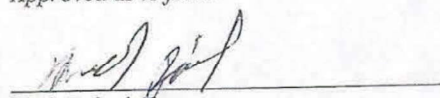
  
Johanna C. Valenzuela  
Assistant U.S. Attorney  
District of South Carolina

FOR DEFENDANTS:

1/25/22  
Date

  
Paul Mashni

Approved as to form

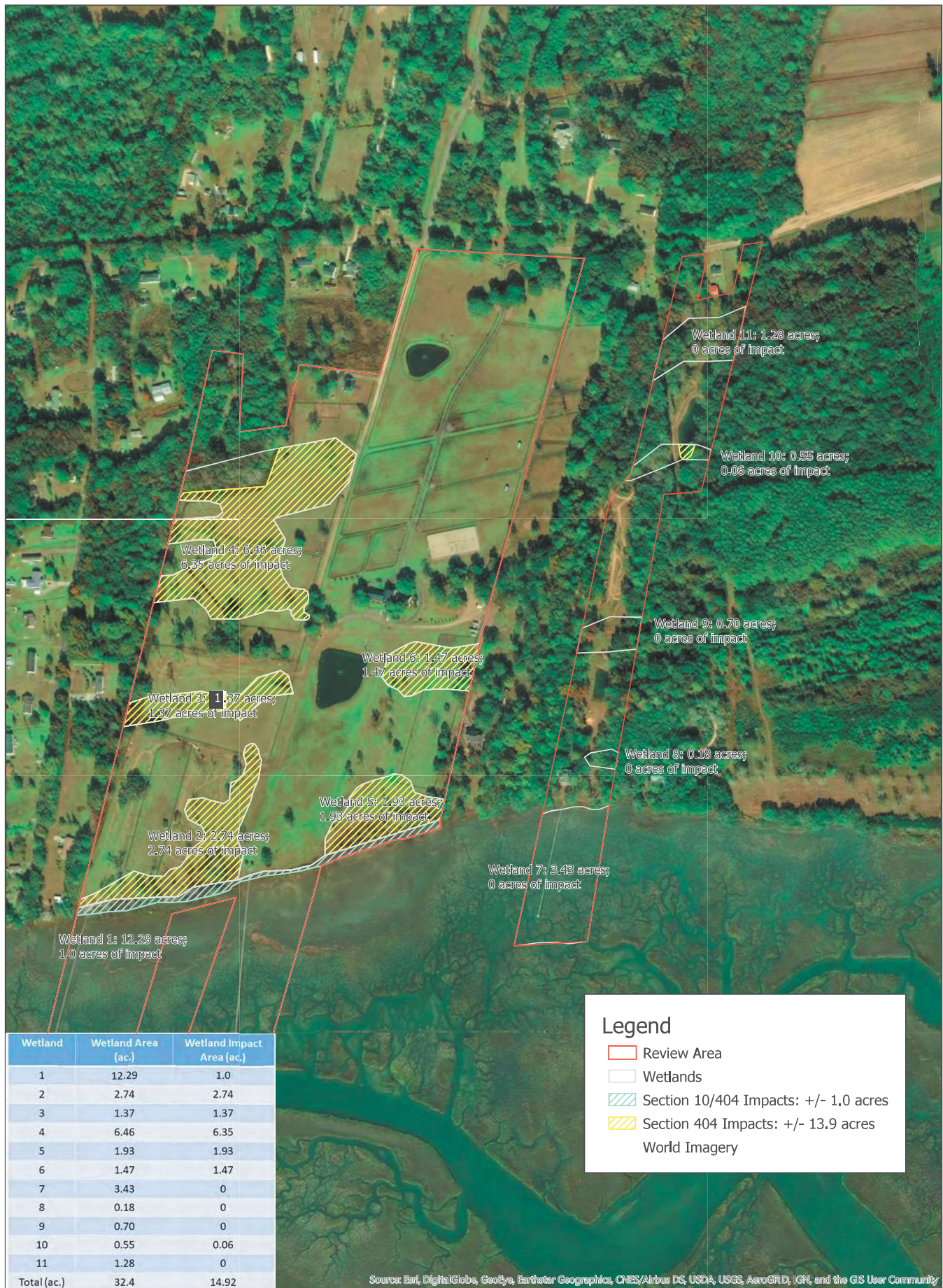
  
Herb Beigel, Esq.

Attorney for Defendants



Figure 23.

SAC-2017-01443  
Wetland & Impact Acreages  
Charleston County, South Carolina





## APPENDIX B

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

United States of America,	)	
	)	Civil Action No.: <u>2:18-cv-02288-DCN</u>
Plaintiff,	)	
	)	
v.	)	
	)	STIPULATION TO TERMINATE
Paul Edward Mashni, <i>et al.</i> ,	)	CONSENT DECREE
	)	
Defendants.	)	
_____	)	

WHEREAS, on \_\_\_\_\_, 2022, a consent decree, Dkt. \_\_\_\_\_, in this matter was approved and entered by the Court, Dkt. \_\_\_\_\_, resolving a Clean Water Act (“CWA”) enforcement action brought by the United States against Defendants for the unpermitted discharge of dredged or fill material into waters of the United States in violation of CWA section 301(a), 33 U.S.C. §1331(a); and

WHEREAS, Section V of the Consent Decree requires Defendants to pay a civil penalty of \$525,000 to the United States, which the parties agree has been paid; and

WHEREAS, Section V of the Consent Decree requires Defendants to purchase a total of 70 freshwater wetland restoration or enhancement mitigation credits from the Palmetto Umbrella Mitigation Bank—Big Run Mitigation Site, which the parties agree have been purchased; and

WHEREAS, Paragraph 47 of the Consent Decree provides that once the forgoing obligations of the Consent Decree have been met by Defendants, the United States shall prepare and file a Stipulation to Terminate the Consent Decree in the form set forth in Appendix B of the Consent Decree; and

WHEREAS, Paragraph 19 of the Consent Decree provides that prior to engaging in any earthmoving activities on the Site, Defendants shall hereafter provide notice and a short description of such activities to the Corps at least sixty (60) Days prior to beginning such activities. The Parties agree to informally confer within sixty (60) days of said notice as to whether such activities require a permit under the CWA and/or Rivers and Harbors Act. The Parties maintain all of their respective rights and defenses with respect to such activities. This obligation shall survive termination of the other provisions of this Decree.

WHEREAS, Paragraph 47 of the Consent Decree provides that Defendants need not provide further consent to file said Termination or further execution of said Stipulation and the parties agree that Defendants have not rescinded their consent for such filing by the United States,

THEREFORE, the Parties stipulate as follows:

The Consent Decree, Dkt # \_\_\_\_\_, is now terminated (except as provided in Paragraph 19 of the Consent Decree).

NOW THEREFORE, the Parties respectfully request the Court to enter the attached order.

IT IS STIPULATED AND AGREED TO ON BEHALF OF:

DATED: \_\_\_\_\_, 202\_\_

United States Department of Justice

\_\_\_\_\_  
Counsel for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

United States of America,	)	
	)	Civil Action No.: <u>2:18-cv-02288-DCN</u>
Plaintiff,	)	
	)	
v.	)	
	)	[PROPOSED] ORDER TO TERMINATE
Paul Edward Mashni, <i>et al.</i> ,	)	CONSENT DECREE
	)	
Defendants.	)	
_____	)	

IT IS HEREBY ORDERED:

The Consent Decree, Dkt. No. \_\_\_\_\_, is terminated (except as provided in Paragraph 19 of the Consent Decree).

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 202\_\_

\_\_\_\_\_  
The Honorable David C. Norton  
U.S. District Judge