

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
)	Civil Action No. 4:20-cv-2400
)	
v.)	Hon. Judge John R. Adams
)	
)	
POLO DEVELOPMENT, INC.;)	
AIM GEORGIA, LLC;)	
JOSEPH ZDRILICH;)	
DONNA ZDRILICH;)	
CARBON HILLS, LLC,)	
)	
Defendants.)	
)	
)	
)	

NOTICE OF LODGING OF [PROPOSED] CONSENT DECREE

COMES NOW Plaintiff the United States of America, through its counsel, Patrick R. Jacobi, to notify the Court that Plaintiff is lodging a proposed Consent Decree which, if approved, would resolve all of the claims asserted by Plaintiff in this case.

Plaintiff respectfully requests that the Court withhold consideration of the proposed Consent Decree while the United States provides an opportunity for public comment pursuant to 28 C.F.R. § 50.7. The Department of Justice will publish a notice in the Federal Register stating that the Consent Decree has been lodged with the Court. The notice will solicit public comment for a period of thirty (30) days.

During the comment period described above, no action is required of the Court as to the proposed Consent Decree. After the comment period has closed, the United States will evaluate any comments received and timely advise the Court as to whether the United States will request that the Court enter the proposed Consent Decree.

Date: March 1, 2022

Respectfully submitted,

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division

/s/ Patrick R. Jacobi
PATRICK R. JACOBI
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
Denver Place Building
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 1, 2022, I electronically filed the foregoing Notice of Lodging of [Proposed] Consent Decree with the Clerk of Court using the CM/ECF system, and a true copy of the foregoing was served electronically via CM/ECF.

/s/ Patrick R. Jacobi

PATRICK R. JACOBI

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

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POLO DEVELOPMENT, INC.;)	
AIM GEORGIA, LLC;)	
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DONNA ZDRILICH; and)	
CARBON HILLS, LLC,)	
)	
Defendants.)	
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)	

CONSENT DECREE

WHEREAS, the Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), filed the Amended Complaint herein against Defendants Polo Development, Inc. (“Polo Development”), AIM Georgia, LLC (“AIM”), Joseph M. Zdrilich, Sr., Donna Zdrilich, and Carbon Hills, LLC, (collectively, “Defendants”), alleging that Defendants violated section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), and have failed to pay administrative penalties under section 309(g) of the CWA, 33 U.S.C. § 1319(g);

WHEREAS, the Amended 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 Lot 1 and Lot 31, both located near the intersection of Polo Boulevard and Burgess Run, in Poland, Mahoning County, Ohio, and more fully described in the Amended Complaint, without authorization by the United States Army Corps of Engineers (the “Corps”);

WHEREAS, the Amended Complaint seeks to: (1) 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) require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; (3) require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d); and (4) require Defendants to pay administrative penalties, plus interest, attorneys’ fees, nonpayment penalties, and costs for collection proceedings, as provided in 33 U.S.C. § 1319(g);

WHEREAS, the Amended Complaint further brings claims under the Federal Debt Collection Procedures Act (“FDCPA”), 28 U.S.C. § 3001 *et seq.*;

WHEREAS, this Consent Decree requires, among other things, measures required for the Defendants to come into compliance with the law, in the form of on-site restoration activities at Lot 1 and Lot 31 (collectively, the “Restoration Site”), as well as mitigation for the harm caused by the discharge of pollutants into waters of the United States, in the form of a conservation easement on the “Mitigation Site” depicted in Appendix B, Exhibit 1, appended hereto and incorporated herein by reference;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the United States’ civil claims under the CWA and FDCPA set forth in the Amended Complaint;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA and FDCPA against Defendants in this case; and

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

THEREFORE, before the taking of any testimony upon the pleadings, 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 subject matter jurisdiction over the claims in the Amended Complaint pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and section 309(b), (d), and (g) of the CWA, 33 U.S.C. § 1319(b), (d), and (g).

2. Venue is proper in the Northern District of Ohio pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1395, because Defendants conduct business or reside in this District, the subject property is located in this District, the violations alleged herein occurred in this District, and the causes of action alleged in the Amended Complaint accrued in this District.

3. The Amended 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, and the FDCPA, 28 U.S.C. § 3001 *et seq.*

II. APPLICABILITY

4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, 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 the Defendant to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Restoration Site and/or Mitigation Site shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Restoration Site and/or the Mitigation Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its proposed successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section XI below that such notice has been given. As a condition precedent to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with and implement 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, civil penalties, and administrative penalties alleged in the Amended Complaint against the Defendants under CWA section 301 and the FDCPA, 28 U.S.C. § 3001 *et seq.*

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.

10. The parties acknowledge that Nationwide Permit 32, found at 82 Fed. Reg. 1860, 1992 (Jan. 6, 2017), authorizes dredged or fill material that was: (1) placed on the Restoration Site; (2) placed as of April 1, 2016 on Lot 1; and/or (3) placed between June 1 and September 30, 2020 on Lot 7/Lot 31, to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree.

11. 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).

12. 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.

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

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

15. Except for Paragraphs 1, 2, and 3, nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. CIVIL PENALTIES

16. Defendants shall pay civil and administrative penalties to the United States in the total amount of TWENTY-NINE THOUSAND dollars + 00/100 (\$29,000.00), within thirty (30) days after entry of this Consent Decree.

17. Defendants shall make the above-referenced payment by FedWire Electronic Funds Transfer (“EFT” or wire transfer) to the United States Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2017V03389), EPA Region 5, and the Department of Justice case number (90-5-1-1-21099). Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney’s Office for the Northern District of Ohio. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day.

18. Upon payment of the civil and administrative penalties required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section XI of this

Consent Decree, within seven (7) days that such payment was made in accordance with Paragraph 17.

19. Penalty payments under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) are penalties within the meaning of section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), and 26 C.F.R. § 1.162-21(a)(3)(i), and Defendants shall not deduct any penalties paid under this Consent Decree pursuant to this Section or Section X (Stipulated Penalties) in calculating their federal income tax.

V. RESTORATION, MITIGATION, AND PRESERVATION

20. Defendants shall perform restoration and mitigation projects in accordance with the terms and conditions stated in Appendix A appended hereto and incorporated herein by reference. Consistent with Section 3.4 of Appendix A, Defendants shall complete the restoration and mitigation projects described in Sections 3.1 and 3.2 of Appendix A no later than July 1, 2022.

21. Defendants shall perform restoration projects in accordance with the terms and conditions stated in Appendix D appended hereto and incorporated herein by reference. Consistent with Section II of Appendix D, Defendants shall complete the restoration and projects described in Section II of Appendix D no later than June 15, 2022.

22. In order to ensure the full and final completion of restoration and mitigation projects described in Appendices A and D, within seven (7) days after the entry of this Consent Decree, Defendants shall deposit and maintain with the Court registry an account that will serve as a performance guarantee, initially in the amount of \$15,000, for performance of the projects identified in Appendices A and D. Two (2) years after entry of this Consent Decree, the parties will assess the progress and remaining work required to complete performance of the projects

identified in Appendices A and D, and Defendants shall deposit and maintain with the Court registry the amount necessary to complete performance of the projects identified in Appendices A and D within two (2) years and three (3) months after entry of this Consent Decree. These deposits with the Court do not relieve Defendants of any of their other obligations under this Consent Decree, including to fully perform and pay for the activities described in Appendices A and D. Without prejudice to any other remedies for nonperformance, in the event of non-timely performance of any of the activities described in Appendices A and D or nonpayment of EnviroScience, Inc., or such other contractor Defendants select subject to EPA's approval to perform these activities ("Contractor(s)"), EPA may move the Court for the disbursement of funds to the Contractor(s) as appropriate to ensure the completion of these activities. Upon termination of this Consent Decree, the parties may move the Court for disbursement of any remaining funds held in the Court registry account to Defendants, as appropriate. Attached hereto as Appendix C is a proposed order of deposit, pursuant to N.D. Ohio Local Rule 67.1, to be used for all deposits of funds.

23. Within thirty (30) days after the Court enters this Consent Decree, Defendants shall establish a conservation easement (i.e., a filed, legally enforceable real estate instrument protecting the property in perpetuity in the form and meeting the requirements of Appendix B) or conservation easements for the areas identified in Appendix B, Exhibit 1, and shall record the conservation easement(s) with the County Recorder of Deeds in Mahoning County, Ohio. At a minimum, and in perpetuity, the conservation easement(s) shall: (1) run with the land and bind all of Defendants' assigns and successors in interest; (2) prohibit any division or subdivision of the easement property; (3) prohibit any filling, excavations, or other changes in the general topography of the easement property; (4) prohibit any commercial activity or industrial

development on the easement property; (5) prohibit the drilling of new wells for the production of oil, gas, or other related products on the easement property; (6) prohibit the placement or construction of any man-made modifications such as buildings, structures, fences, roads, and parking lots on the easement property; (7) prohibit any cutting of trees, ground cover or vegetation, mowing, or destroying such plant life by means of herbicides on the easement property, except for the control of invasive plant species; (8) prohibit waste, garbage, and unsightly or offensive materials from accumulating on the easement property; and (9) prohibit dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering natural water courses and streams and adjacent riparian buffers on the easement property. Reliance on one or more Defendants by another to establish the conservation easement(s) according to this Paragraph shall not relieve any Defendant of responsibility for failure to establish the conservation easement(s) satisfactorily to EPA.

24. Within seven (7) calendar days after recording the conservation easement(s) described in Paragraph 23, Defendants shall submit to EPA certified copies of the recorded conservation easement(s). If EPA determines that a conservation easement does not conform to the requirements in Paragraph 23, Defendants shall establish a new conservation easement that conforms to the requirements of Paragraph 23, correcting the deficiencies identify by EPA, within fourteen (14) calendar days after EPA notifies Defendants of the deficiencies.

25. Upon entry of this Consent Decree, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain, or otherwise disturb in any manner whatsoever any location identified in Appendix B, Exhibit 1, except as approved by EPA.

26. To ensure that all parcels of land identified in Appendix B, Exhibit 1, remain undisturbed, Defendants shall, within fifteen (15) days after entry of this Consent Decree, record

a certified copy of this Consent Decree with the Recorder of Deeds Office in Mahoning County, Ohio. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Appendix B, Exhibit 1, shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

VI. NOTICES AND OTHER SUBMISSIONS

27. Within thirty (30) days after the deadline for completing any task set forth in Appendices A and D of this Consent Decree, Defendants shall provide the United States with written notice, at the addresses specified in Section XI of this Consent Decree, of whether or not that task has been completed.

28. If the required task has been completed, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

29. In all notices, documents, or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall 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.

VII. RETENTION OF RECORDS AND RIGHT OF ENTRY

30. Until three (3) years after termination of this Consent Decree, Defendants shall 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 Appendices A and D, regardless of any corporate retention policy to the contrary. Until three (3) years after termination 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 Appendices A and D.

31. At the conclusion of the document retention period, Defendants shall notify the United States at least ninety (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. 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 Defendants assert such a privilege, they shall provide the United States with the following: (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.

32. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendants' premises to: (1) monitor the activities required by this Consent Decree; (2) verify

any data or information submitted to the United States; (3) obtain samples; (4) inspect and evaluate Defendants' restoration and/or mitigation activities; and (5) inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA. 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

33. Any dispute that arises with respect to the meaning or 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, 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, 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 Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

34. 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. 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 the CWA and that Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

35. 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 43 below regarding payment of stipulated penalties.

IX. FORCE MAJEURE

36. 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 that 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, that could not be overcome by due diligence and that 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 a site or portion of a site; or failure to obtain federal, state, or local permits.

37. 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 XI. Such notice shall include a discussion of the following:

- A. which 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 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.

38. 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.

39. 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.

40. Defendants shall bear the burden of proving that: (1) 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) 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

41. After entry of this Consent Decree, if Defendants fail to timely fulfill any requirement of the Consent Decree (including but not limited to Appendices A, B, and D and the performance and monitoring criteria contained therein), 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 | \$100.00 per day |
| B. | For Day 31 up to and including
Day 60 of non-compliance | \$500.00 per day |
| C. | For Day 61 and beyond
of non-compliance | \$1,000.00 per day |

Such payments shall be made upon demand by the United States within thirty (30) days after the demand, unless Defendant invokes the Dispute Resolution provisions of Section VIII.

42. 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 and/or the Force Majeure provisions in Section IX shall be resolved upon motion to this Court as provided in Paragraphs 33 and 34.

43. 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.

44. 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 36 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

45. 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.

46. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the United State Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number (2017V03389), EPA Region 5, and the Department of Justice case number (90-5-1-1-21099). Payment shall be made in accordance with instructions provided to Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio. 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 at the addresses specified in Section XI of this Consent Decree.

XI. ADDRESSES

47. 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) Richard Clarizio & Robert Peachey
Assistant Regional Counsels
United States Environmental Protection Agency
Region 5
Office of Regional Counsel (C-14J)
77 W. Jackson
Chicago, IL 60604
clarizio.richard@epa.gov
peachey.robert@epa.gov
- (2) Christine Shonnard
Physical Scientist, Section 3
Water Enforcement & Compliance Assurance Branch
United States Environmental Protection Agency
77 W. Jackson Blvd.
Mail Code ECW-15J
Chicago, IL 60604-3590
shonnard.christine@epa.gov

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

Patrick Jacobi
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202
patrick.r.jacobi@usdoj.gov

C. TO DEFENDANTS:

Joseph M. Zdrilich, Sr.
3615 Polo Boulevard
Youngstown, OH 44514

Joseph Zdrilich, Jr.

The Zdrilich Law Group
3575 Koger Blvd. Ste 125
Duluth, GA 30096
joseph@tzlawgroup.com

XII. COSTS OF SUIT

48. 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

49. 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. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

XIV. CONTINUING JURISDICTION OF THE COURT

50. 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 may be necessary or appropriate for construction or execution of this Consent Decree. During

the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

51. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any substantive modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and Defendants and approved by the Court.

XVI. TERMINATION

52. Except for Paragraph 25, 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 Consent Decree or any portion of it; or
- B. Defendants may make a unilateral motion to the Court to terminate this Consent Decree after each of the following has occurred:
 1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree, including, but not limited to Appendices A, B, and D, and the performance and monitoring criteria contained 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 after receiving such certification from 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.

XVII. 26 U.S.C. SECTION 162(f)(2)(A)(ii) IDENTIFICATION

53. For purposes of the identification requirement of section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2)(iii)(A), Defendants' performance under Section V (Restoration, Mitigation, and Preservation) is restitution or activities required to come into compliance with law.

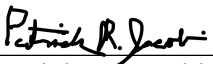
IT IS SO ORDERED.

Dated and entered this _____ day of _____, 202_.

Honorable John R. Adams
United States District Judge

ON BEHALF OF THE UNITED STATES:

Todd Kim, Assistant Attorney General
Environment and Natural Resources Division



Patrick R. Jacobi
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th Street, South Terrace, Suite 370
Denver, CO 80202

Dated: March 1, 2022

EPA:
JOSEPH
THEIS

Digitally signed by
JOSEPH THEIS
Date: 2022.02.24
20:21:49 -05'00'

Dated: _____

Joseph G. Theis, Acting Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

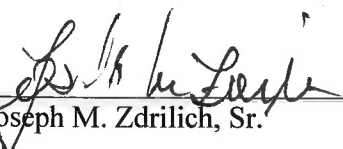
ROBERT
KAPLAN

Digitally signed by ROBERT KAPLAN
Date: 2022.02.17 15:05:14 -06'00'

Dated: _____

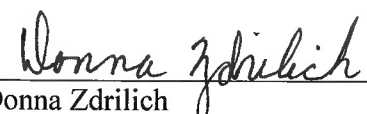
Robert A. Kaplan
Regional Counsel

FOR DEFENDANTS:



Joseph M. Zdrilich, Sr.

Dated: 2-11-22



Donna Zdrilich

Dated: 2-11-22



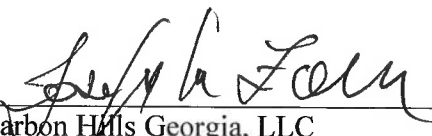
Polo Development, Inc.

Dated: 2-11-22



AIM Georgia, LLC

Dated: 2-11-22



Carbon Hills Georgia, LLC

Dated: 2-11-22

Appendix A

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

POLO DEVELOPMENT RESTORATION PLAN

Mahoning County, Ohio

Prepared for:

Mr. Joseph Zdrilich, Jr.
The Zdrilich Law Group, LLC
3575 Koger Blvd. Suite 125
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Project No.: 12920

Date: 11/02/2020, revised 12/8/2020, revised 10/01/2021

Prepared by:



5070 Stow Rd.
Stow, OH 44224
800-940-4025

www.EnviroScienceInc.com

Polo Development Restoration Plan

Version 1.1

Document Date: 11/02/2020, rev. 12/8/2020, rev. 10/01/2021

Project No.: 12920

Prepared for:

Mr. Joseph Zdrilich,
Jr.
The Zdrilich Law
Group, LLC

Authorization for Release

The analyses, opinions, and conclusions in this document are based entirely on EnviroScience's unbiased, professional judgment. EnviroScience's compensation is not in any way contingent on any action or event resulting from this study.

The undersigned attest, to the best of their knowledge, that this document and the information contained herein is accurate and conforms to EnviroScience's internal Quality Assurance standards.



Michael A. Liptak, Ph.D.
Certified Senior Ecologist (ESA)

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EXECUTIVE SUMMARY

This mitigation plan is prepared on behalf of The Zdrilich Law Group, LLC (TZL) to resolve issues between TZL, on behalf of Defendants in United States v. Polo Development, et al., 20-cv-2400 (N.D. Ohio), and federal regulatory agencies. The mitigation plan includes the re-establishment/rehabilitation of wetlands onsite as compensatory mitigation for previous unauthorized impacts to 0.42 acres of wetlands at the Site. The plan includes a total of 0.42 acres of wetland restoration and builds upon the initial requirements of a previous mitigation plan. The final mitigation plan shall meet both federal and state wetland regulatory requirements.

The four general areas discussed in the plan are

- 1) the Northeast Area- the wetland area located north of Polo Blvd and east of Burgess Run. This area was restored to original elevation in June 2013 by Ecological Restoration, Inc., seeded, and planted with native trees and shrubs.
- 2) The Northwest Area – the area located north of Polo Blvd and west of Burgess Run
- 3) The Southeast Area - the area located south of Polo Blvd and east of Burgess Run
- 4) The Southwest Area - the area located south of Polo Blvd and west of Burgess Run

Wetland restoration will consist of the following activities:

- 1) Ceasing mowing activities within the previously restored Northeast Area and a portion of the Northwest Area
- 2) Ceasing mowing within the proposed conservation easement south of Polo Blvd
- 2) Seeding the Northwest Area with a native wetland seed mix
- 3) Planting native trees and shrubs within the Northeast Area and a portion of the Northwest Area
- 4) Placing a conservation easement on the Northeast Area, Northwest Area, and the portions of the Southeast and Southwest Areas as depicted in Exhibit A, Figure 7, including signs, and
- 5) Invasive species control in and around the wetlands north of Polo Blvd.

The wetlands will be monitored periodically for a period of ten years, including

- 1) Annual monitoring visits each year in August for Years 1-6, with additional monitoring visits in Years 8 and 10. These visits will include evaluation of the evidence of wetland hydrology and photographs from fixed locations, as well as the activities below
- 2) Delineation of wetland boundaries in the Northeast Area in Year 2
- 3) Monitoring the success of woody plantings in Years 1-6, 8 and 10
- 4) Invasive species monitoring and control, if necessary
- 5) Annual reports which will be provided to USEPA by December 31 of each year in which monitoring occurs (Years 1-6, 8 and 10)

The proposed performance criteria are:

- 1) Cessation of mowing in the conservation easement areas
- 2) Establishment of 0.42 ac of jurisdictional wetland in the Northeast Area
- 3) 80% survival of planted woody stock in the Northeast and Northwest Areas
- 4) Less than 10% cover of invasive species in the Northeast Area
- 5) Placement of a conservation easement on the areas depicted in Exhibit A, Figure 7, and installation of signs around the easement boundaries

1.0 INTRODUCTION

This mitigation plan is prepared on behalf of The Zdrilich Law Group, LLC (TZL) to resolve issues between TZL, on behalf of Defendants in *United States v. Polo Development, et al.*, 20-cv-2400 (N.D. Ohio), and federal regulatory agencies (Exhibit A: Figure 1). The mitigation plan includes the re-establishment/rehabilitation of wetlands onsite as compensatory mitigation for previous unauthorized impacts to 0.42 ac of wetlands at the Site. The plan includes a total of 0.42 acres of wetland restoration and builds upon the initial requirements of a previous mitigation plan. The final mitigation plan shall meet both federal and state wetland regulatory requirements.

2.0 EXISTING CONDITIONS AND SITE HISTORY

The existing conditions onsite are characterized as recovering for the areas north of Polo Blvd.

The four general areas discussed in the plan are shown in Exhibit A: Figure 2 and described below.

- 1) The Northeast Area- the wetland area located north of Polo Blvd and east of Burgess Run
- 2) The Northwest Area – the area located north of Polo Blvd and west of Burgess Run
- 3) The Southeast Area - the area located south of Polo Blvd and east of Burgess Run
- 4) The Southwest Area - the area located south of Polo Blvd and west of Burgess Run

2.1 NORTHEAST AREA

The Northeast Area is located north of Polo Blvd and east of Burgess Run. This area was restored to original elevation in June 2013 by Ecological Restoration, Inc., seeded, and planted with native trees and shrubs.

Removal of the fill in the Northeast Area in 2013 has restored the natural hydrology to the area, but it continues to be mowed, which has prevented the successful reestablishment of herbaceous wetland plants. Some of the trees and shrubs have survived, but not enough to put the site onto a trajectory for becoming scrub-shrub or forested. This is likely due to beaver activities onsite as well as mowing preventing the recruitment of woody seedlings. The unmowed areas show significant amounts of woody plant recruitment of native willows and dogwoods. Beaver activity continues onsite, and active trapping is being used to control the population of beavers and other small mammals such as muskrats and raccoons. Such trapping will be performed in accordance with all state and local regulations. Photographs of this area are contained in Exhibit B.

2.2 NORTHWEST AREA

The Northwest Area is located north of Polo Blvd and West of Burgess Run. Photographs of this area are contained in Exhibit B. This area was identified by USEPA as an area of fill based on differences between the 2004 and 2008 contours on the Mahoning County GIS. Mr. Joseph M. Zdrilich, Sr. stated that no fill was placed in this area. An examination of the 2004 and 2008 contours showed many discrepancies in the contours in areas that had not changed elevation between 2004 and 2008, such as forested areas and sections of road. See Figures 3 and 4 in Exhibit A. An examination of the soils in the Northwest Area was completed on February 13, 2020. While Soils Pits 1 and 2 showed evidence of fill along the road, no evidence of fill was found in Soil Pits 3-7. Photos of the soil pits are contained in Exhibit B.

2.3 SOUTHEAST AREA

The area south of Polo Blvd was impacted in 2020 by Mr. Joseph M. Zdrilich, Sr.'s placement of approximately 0.10 acres of fill or dredged material in wetlands in that area next to a natural drainage ditch, from which the material placed in those wetlands was excavated. This area was discussed by TZL and USEPA for possible preservation of the area within the 100-year floodplain. Photographs of this area are contained in Exhibit B; these photographs pre-date the placement of fill in this area in 2020.

2.4 SOUTHWEST AREA

USEPA had concerns regarding earth disturbance in the area south of Polo Blvd and west of Burgess Run. On March 16, 2020, Michael Liptak visited the Polo Development site to investigate the disturbed earth area. Mr. Joseph M. Zdrilich, Sr. met Dr. Liptak onsite and stated that the area had been originally disturbed when Polo Blvd was being constructed, and that a dirt road remained after that construction was complete. It grew into shrubs and small trees. In 2019, a developer who was building houses at the cul-de-sac at the end of Polo Blvd needed fill dirt and asked if he could take some dirt from this previously excavated area. Mr. Joseph M. Zdrilich, Sr. gave him permission and the developer took machinery into the area to remove dirt and take it to the cul-de-sac.

The area appeared to be sloping up to the south, with signs of excavation along the east side of the road and tracks along the road. Silt fence and rock was observed in the ditch downstream of the plastic culvert by Polo Blvd. No evidence of herbaceous or woody wetland vegetation was observed in any part of the area. All of the trees observed in the brush piles and along the edge of the disturbed areas were upland species such as wild black cherry. Woody debris was piled up on the west side of the dirt road.

No signs of wetland hydrology, hydric soils, or wetland hydrology were observed onsite. There was no evidence of current or historic wetlands in the limits of the Southwest Disturbed Area. The edges of the area were searched to see if any earth had entered the adjacent wetland. No evidence of wetland fill was observed. Photographs taken during the March 16, 2020 field visit are attached in Exhibit B.

2.5 OWNERSHIP AND EASEMENTS

The Site comprises two parcels (35-065-0-007.01-0 and 35-065-0-007.07-0) both of which are owned by Donna M. Zdrilich, 3615 Polo Blvd, Poland OH 44514 (Exhibit A: Figure 1). EnviroScience is unaware of any easements on the properties. Parcel 35-065-0-007.07-0 has been subdivided since this restoration plan was initially prepared. The conservation easement referenced in this restoration plan will be on what remains of Lot 7 following that subdivision; the 0.10 acres of fill placed in 2020, referenced above, was placed in what is now "Lot 31" of this subdivided area.

2.6 PREVIOUS RESTORATION ACTIVITIES

The Northeast Area was restored to original elevation in June 2013 by Ecological Restoration, Inc., seeded, and planted with native trees and shrubs.

3.0 RESTORATION PLAN

Wetland restoration will consist of the following activities:

- 1) Ceasing mowing activities within the previously restored Northeast Area and a portion of the Northwest Area
- 2) Seeding the Northwest Area with a native wetland seed mix such as ERNMX 120
- 3) Planting native trees and shrubs within the Northeast Area and a portion of the Northwest Area
- 4) Placing a conservation easement on the Northeast Area, Northwest Area, and portions of the Southeast and Southwest Areas, including sign installation, and
- 5) Invasive species control in and around the wetlands north of Polo Blvd.

Additional details are contained in the following sections.

3.1 NORTHEAST AREA RESTORATION

Mowing will stop in the Northeast Area, and the following species will be installed (species may change based on availability). The area will be overseeded with 6 lbs of ERNMX-120.

Table 3.1 Proposed Tree and Shrub Plantings in the Northeast Area

Scientific Name	Common Name	# Proposed	Form	Source
<i>Salix nigra</i>	Black willow	70	Live stake	Locally cut
<i>Salix interior</i>	Sandbar willow	40	Live stake	Locally cut
<i>Quercus palustris</i>	Pin oak	20	3-gallon container	Riverside Native Trees
<i>Quercus bicolor</i>	Swamp white oak	20	3-gallon container	Riverside Native Trees
<i>Platanus occidentalis</i>	Sycamore	20	3-gallon container	Riverside Native Trees
<i>Sambucus canadensis</i>	Common elderberry	5	Live stake	Locally cut
<i>Cornus amomum</i>	Silky dogwood	80	Live stakes	Locally cut
<i>Alnus incana</i>	Speckled alder	80	Live stakes	Locally cut

- Live stakes will be installed in early spring 2022 prior to April 15. Containerized plants may be installed by July 1, 2022.
- Volunteer tree and shrub seedlings are also expected to occur on the site and will contribute to the plant community.
- Herbicide applications are allowed in a 3-foot radius around woody plants for the first two years.

3.2 NORTHWEST AREA RESTORATION

Mowing will stop in the Northwest Area, and the following species will be installed (species may change based on availability). The area will not be overseeded, as native plants are established in the unmowed areas.

Table 3.2 Proposed Tree and Shrub Plantings in the Northwest Area

Scientific Name	Common Name	# Proposed	Form	Source
<i>Salix nigra</i>	Black willow	20	Live stake	Locally cut
<i>Salix interior</i>	Sandbar willow	15	Live stake	Locally cut
<i>Sambucus canadensis</i>	Common elderberry	5	Live stake	Locally cut
<i>Cornus amomum</i>	Silky dogwood	20	Live stakes	Locally cut
<i>Alnus incana</i>	Speckled alder	20	Live stakes	Locally cut

- Live stakes will be installed in early spring 2022 prior to April 15. Containerized plants may be installed by July 1, 2022.
- Volunteer tree and shrub seedlings are also expected to occur on the site and will contribute to the plant community.
- Herbicide applications are allowed in a 3-foot radius around woody plants for the first two years.

3.3 SOUTHEAST AND SOUTHWEST AREAS

The wetland area south of Polo Blvd on the remainder of Lot 7, following its subdivision, shows no signs of fill or other impairments caused by Mr. Joseph M. Zdrilich, Sr. and will be preserved under a conservation easement. The United States alleges that there has been 0.10 acres of fill on what is now Lot 31 of the area south of Polo Blvd, which is addressed in a separate restoration plan.

3.4 CONSTRUCTION SCHEDULE AND WORK FLOW

Live stake and seed installation will occur in early spring 2022, prior to April 15. Containerized plants will be installed by July 1, 2022.

3.5 PROTECTION OF EXISTING RESOURCES

A conservation easement shall be placed on the preserved properties (Figure 7 in Exhibit A). Signs shall be placed within visual distance along the mitigation area that indicate the area is a protected wetland and stream mitigation project and that mowing, dumping, or any other activity that would result in a degradation of the wetland and stream without prior authorization from USACE and Ohio EPA is prohibited.

4.0 WETLAND MONITORING AND PERFORMANCE CRITERIA

The wetlands will be monitored periodically for a period of ten years, including

- 1) Annual monitoring visits each year in August for Years 1-6, with additional monitoring visits in Years 8 and 10. These visits will include evaluation of the evidence of wetland hydrology and photographs from fixed locations, as well as the activities below

- 2) Delineation of wetland boundaries in the Northeast Area in Year 2
- 3) Monitoring the success of woody plantings in Years 1-6, 8 and 10
- 4) Invasive species monitoring and control, if necessary
- 5) Annual reports which will be provided to USEPA by December 31 of each year in which monitoring occurs (Years 1-6, 8 and 10)

The proposed monitoring schedule is summarized in Table 3.3 below.

Table 3.3 Proposed Monitoring Schedule

Monitoring activity	Monitoring Year							
	2022	2023	2024	2025	2026	2027	2029	2031
Delineation		X			X			
Hydrologic monitoring	X	X	X	X	X	X	X	X
Vegetation Monitoring	X	X	X	X	X	X	X	X
Mapping, % relative covers	X	X	X	X	X	X	X	X
As-built report*	X							
Annual report**	X	X	X	X	X	X	X	X

*The as-built report shall be submitted to EPA within 14 days of completion of the planting activities described in Sections 3.1 and 3.2.

** Annual reports shall be submitted to EPA by Dec 31 of their respective monitoring year.

5.0 PERFORMANCE CRITERIA

The wetlands will be monitored for a period of ten years.

The proposed performance criteria are:

- 1) Cessation of mowing
- 2) Establishment of 0.42 ac of jurisdictional wetland in the Northeast Area
- 3) 80% survival of installed woody stock in the Northeast and Northwest Areas
- 4) Less than 10% cover of invasive species in the Northeast Area
- 5) Placement of a conservation easement on the preserved areas and installation of signs around the easement boundaries

6.0 MONITORING AND REPORTING

Monitoring will be conducted in August and an annual report will be submitted by December 31 of each year.

7.0 LONG TERM MANAGEMENT AND MAINTENANCE

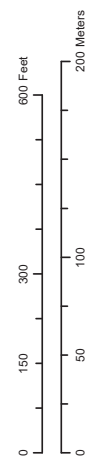
The conservation easement will be managed by the easement holder.

8.0 INSPECTION

TZL will allow federal and state agencies access to the site for inspections.

Exhibit A

Figures

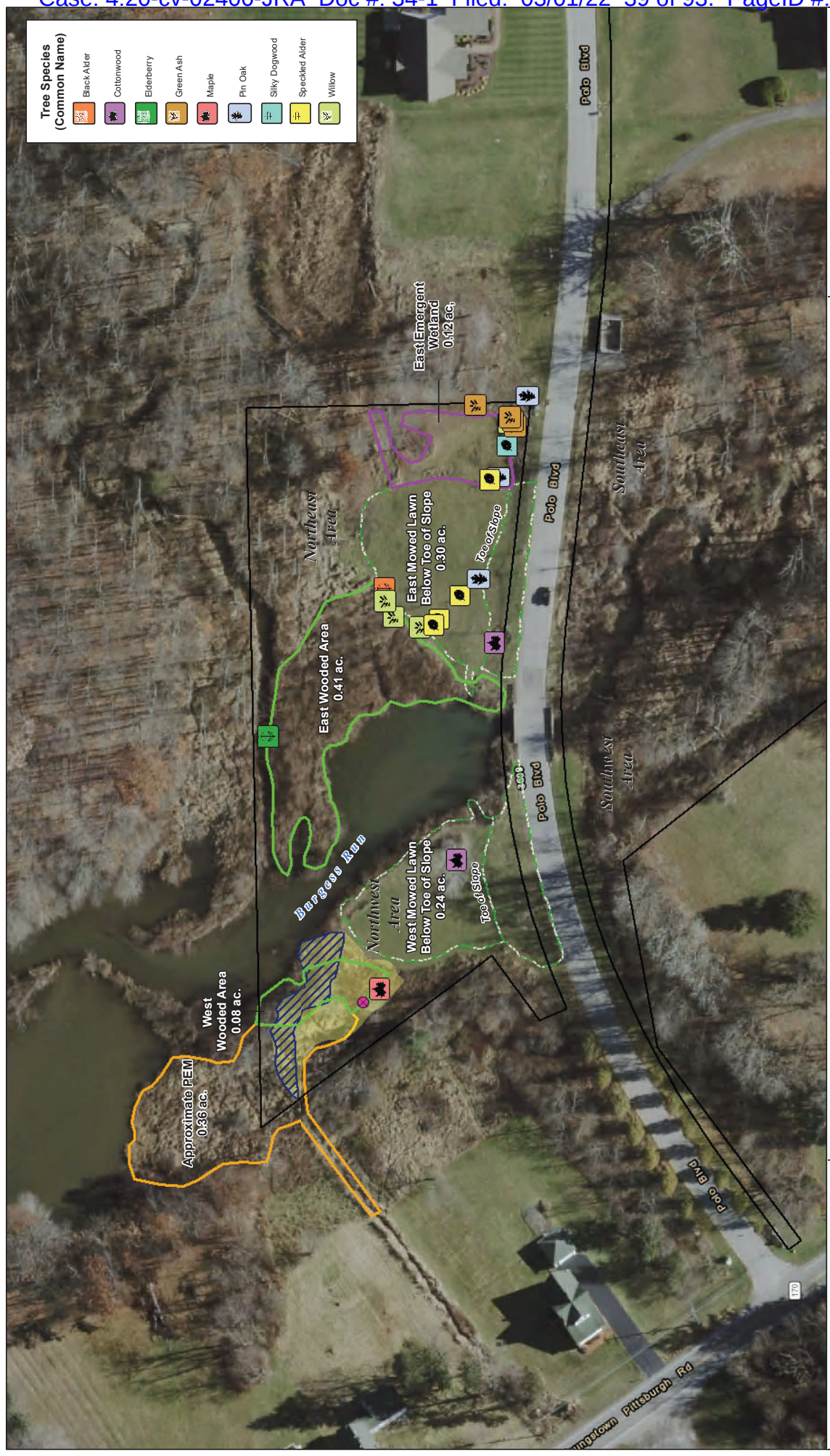


Parcel Boundary



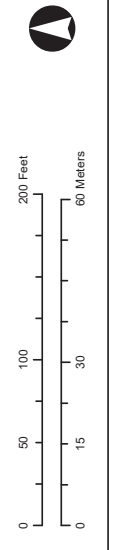
Figure 1.
Parcel Map of the
Polo Development Site,
Poland Township, Mahoning County, Ohio.

Basemap courtesy of Esri.



Tree Species (Common Name)

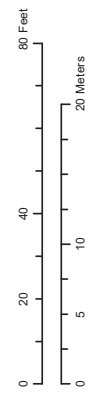
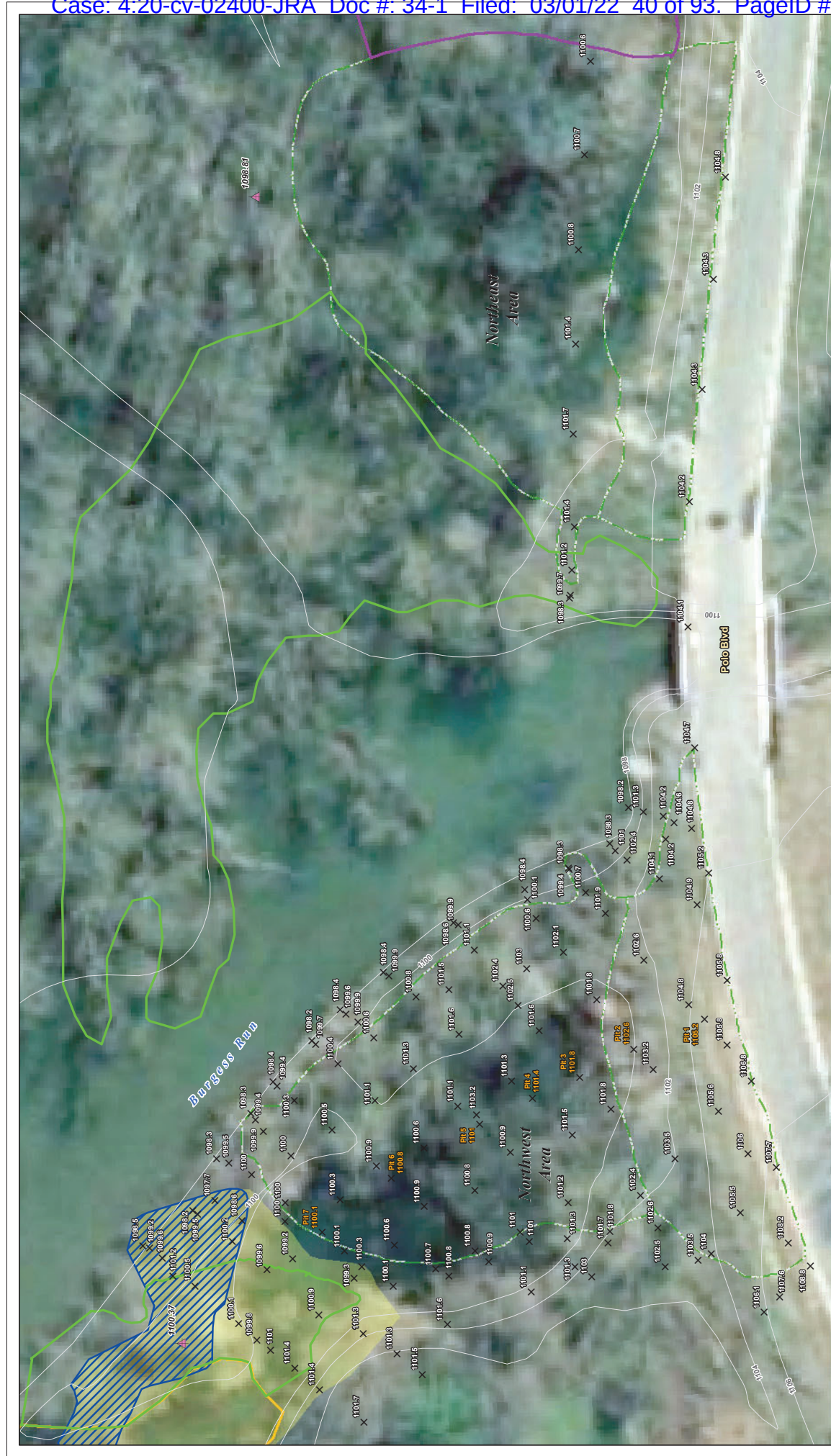
	Black Alder
	Cottonwood
	Elderberry
	Green Ash
	Maple
	Pin Oak
	Silky Dogwood
	Speckled Alder
	Willow



	EPA Sample Plot
	Maintained Lawn
	Distributed Wetland Area
	Approximate PEM
	East Emergent Wetland
	Wooded Area
	Parcel Boundary

Figure 2.
 2020 Site Map of the
 Polo Development Site.
 Poland Township, Mahoning County, Ohio.

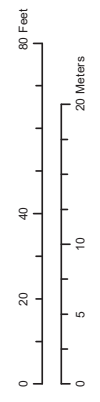
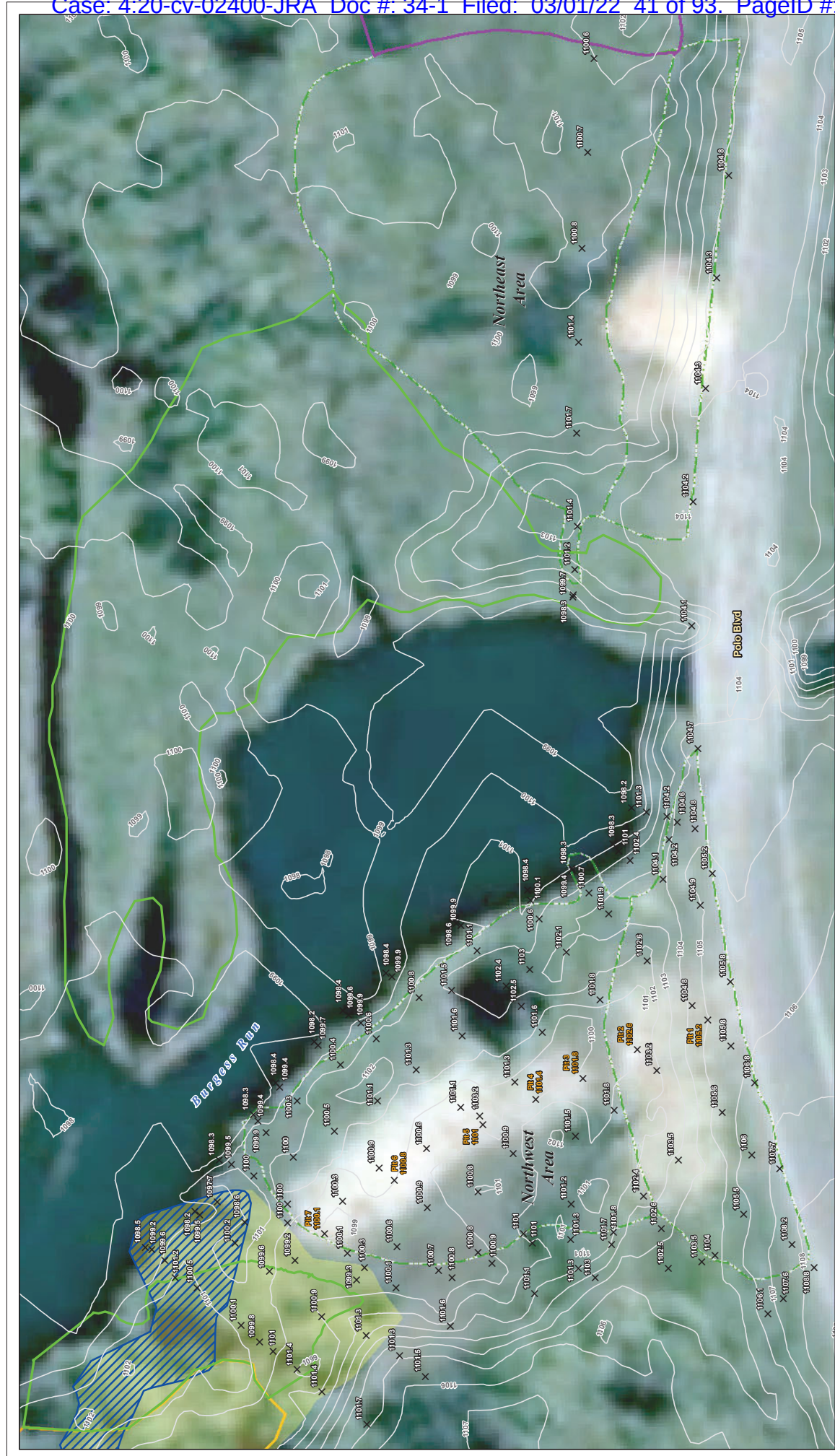
Basemap courtesy of Esri.



- X ES Survey Elevation (2020)
- X Spot Elevation (2004)
- X Shoring (2004)
- X County (2004)
- X County (GIS)
- Maintained Lawn
- Disturbed Wetland Area
- Approximate PEM
- East Emergent Wetland
- Wooded Area

Figure 3. Map of the Polo Development Site
 Showing 2020 Survey Data and 2004 Contours
 From the Mahoning County Auditor.
 Poland Township, Mahoning County, Ohio.

Basemap courtesy of Google (2004).



- X ES Survey Elevation
- 1 Contour (from OGRIP 2008 DEM)
- Maintained Lawn
- Disturbed Wetland
- Approximate PEM
- East Emergent Wetland
- Wooded

Figure 4. Map of the Polo Development Site Showing 2020 Survey Data and 2008 Contours From the Mahoning County Auditor. Poland Township, Mahoning County, Ohio.

Basemap courtesy of Google (2008).



Figure 5.
 Contour Comparison Map.
 The Polo Development Site.
 Poland Township, Mahoning County, Ohio.

Parcel Boundary
 Spot Elevation (2004 Mahoning County GIS)
 Spot Elevation (2008 Mahoning County GIS)
 Mahoning County Contours 2004
 Mahoning County Contours 2008

0 75 150 300 Feet
 0 25 50 100 Meters

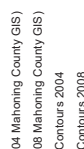





Figure 6.
FEMA Floodplain Map of
the Polo Development Site.
Poland Township, Mahoning County, Ohio.

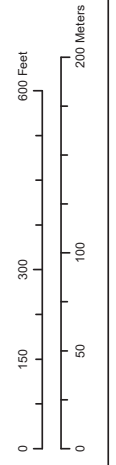
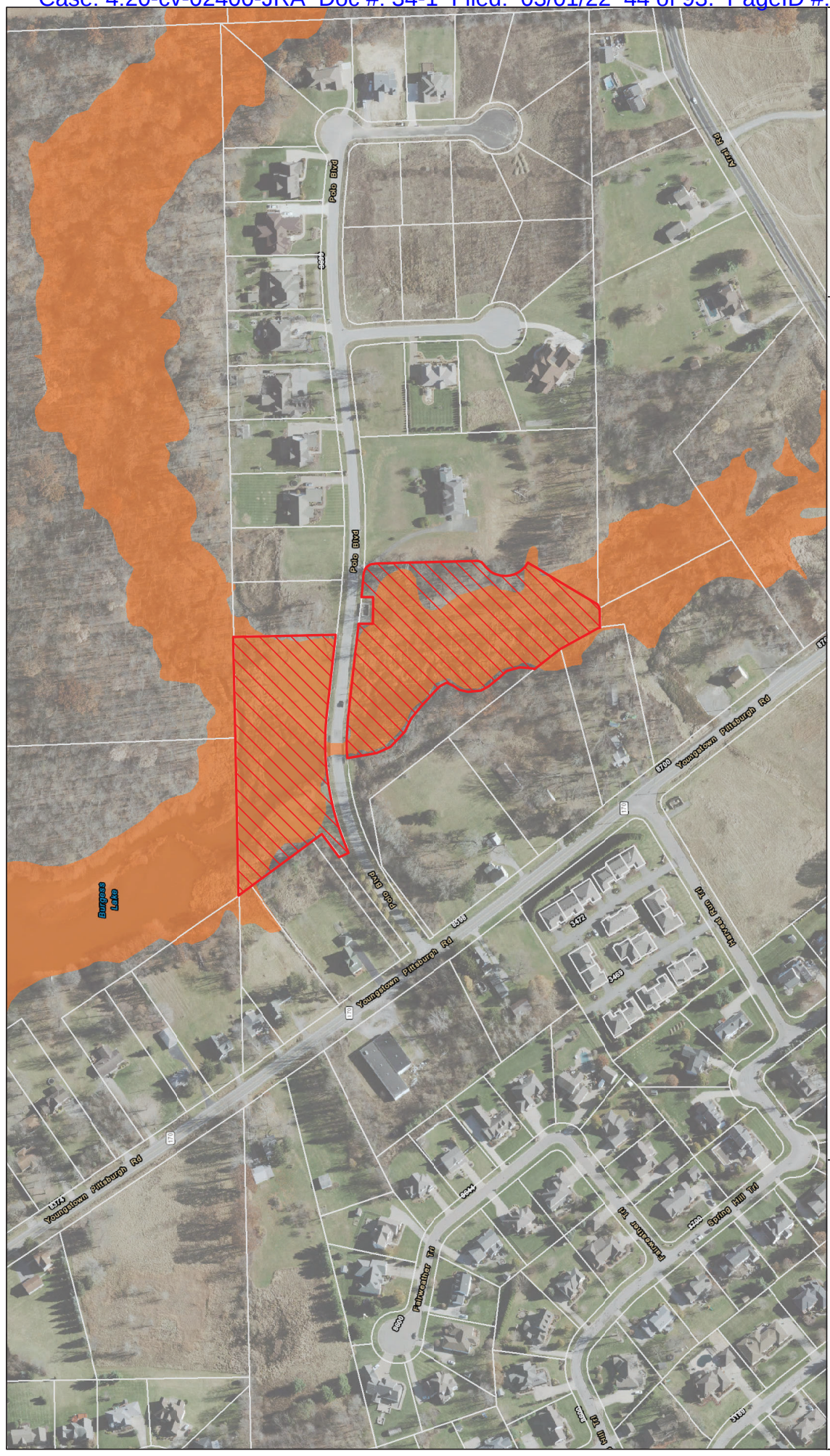
100-Year Flood Zone
 Parcel Boundary



0 750 1,500 3,000 Feet
 0 250 500 1,000 Meters



Basemap courtesy of Esri. Flood data courtesy of FEMA.






-  Proposed Conservation Easement
-  100-Year Flood Zone
-  Parcel Boundary

Figure 7.
Proposed Conservation Easement
for the Polo Development Site,
Poland Township, Mahoning County, Ohio.

Basemap courtesy of Esri.

Exhibit B

Photos

Northeast Area



Photo 1. East Emergent Wetland, facing north. 1/30/2020.



Photo 2. East Emergent Wetland, facing east. 1/30/2020.

Northeast Area



Photo 3. East Emergent Wetland, facing south. 1/30/2020.



Photo 4. East Emergent Wetland, facing west. 1/30/2020.

Northeast Area



Photo 5. Unnamed Stream, facing north. 1/30/2020.



Photo 6. Unnamed Stream, facing east (upstream). 1/30/2020.

Northeast Area



Photo 7. South bank of unnamed stream, facing south. 1/30/2020.



Photo 8. Unnamed stream, facing west. 1/30/2020.

Northeast Area



Photo 9. Typical East Wooded Area, showing regeneration.
1/30/2020.



Photo 10. Typical East Wooded Area, showing regeneration.
1/30/2020.

Northeast Area



Photo 11. Typical East Wooded Area, showing regeneration. 1/30/2020.



Photo 12. Beaver sign in East Wooded Area. 1/30/2020.

Northeast Area



Photo 13. East Mowed Area, facing south. 1/13/2020.



Photo 14. East Mowed Area, facing east. 1/13/2020.

Northeast Area



Photo 15. East Mowed Area, facing north. 1/13/2020.



Photo 16. East Mowed Area, facing west. 1/13/2020.

Northeast Area



Photo 17. Speckled alder in East Mowed Area. 1/13/2020.



Photo 18. Sandbar willow in the East Wooded Area. 1/13/2020.

Northeast Area



Photo 19. Black willows in the East Wooded Area. 1/30/2020.

Northwest Area



Photo 20. West Mowed Lawn, facing north. 1/13/2020.



Photo 21. West Mowed Lawn, facing east. 1/13/2020.

Northwest Area



Photo 22. West Mowed Lawn, facing south. 1/13/2020.



Photo 23. West Mowed Lawn, facing west. 1/13/2020.

Northwest Area



Photo 24. Area north of West Mowed Lawn, facing east.
1/13/2020.



Photo 25. Area north of West Mowed Lawn, facing south.
1/13/2020.

Northwest Area



Photo 26. Area north of West Mowed Lawn, facing west. 1/13/2020.



Photo 27. Area north of West Mowed Lawn, facing north. 1/13/2020.

Northwest Area



Photo 28. View along soil pit transect, facing north. 2/13/2020.



Photo 29. Soil Pit 1 near road. 2/13/2020.

Slope near road
Soil: 0-24 inch 10YR3/3

Northwest Area



Photo 30. Soil Pit 2 at toe of slope. 2/13/2020.
Soil: 0-10 inch 10YR 3/2
10 refusal



Photo 31. Soil Pit 3. 2/13/2020.
Soil: 0-14 inch 10YR 3/2

No signs of fill

Northwest Area



Photo 32. Soil Pit 4. 2/13/2020.
Soil: 0-10 in 10YR3/2 silt loam
10-18in 10YR4/2
18-20 10YR 4/1

No signs of fill



Photo 33. Soil Pit 5. 2/13/2020.

Soil: 0-8in 10YR4/2 silty clay loam
8-18+ in 10YR4/1 80%, 10YR3/6 10% silty clay

No signs of fill

Northwest Area



Photo 34. Soil Pit 6. 2/13/2020.

Soil: 0-2in 10YR 4/2 silt loam
2-6in 10YR 4/1 70% 10YR 3/1 30% loam
6-12 10YR4/1 sandy loam

No signs of fill



Photo 35. Soil Pit 7. 2/13/2020.

Soil: 0-2in 10YR 4/2 loamy sand
2-8+ 10YR 4/1 55%, 10YR3/8 45%
Manganese

Water in pit at 0 in
No signs of fill

Southwest Area



Photo 36. View from Polo Blvd, facing south. 3/16/2020.



Photo 37. Facing west along roadside ditch. 3/16/2020.

Southwest Area



Photo 38. Facing east toward Burgess Run. 3/16/2020.



Photo 39. Facing south. 3/16/2020.

Southwest Area



Photo 40. Facing west. 3/16/2020.



Photo 41. Facing north toward road. 3/16/2020.

Southwest Area



Photo 42. Facing east toward Burgess Run. 3/16/2020.



Photo 43. Facing south toward end of disturbed earth area. 3/16/2020.

Southwest Area



Photo 44. Facing west, showing brush piles. 3/16/2020.



Photo 45. Facing north toward Polo Blvd. 3/16/2020.

Southwest Area



Photo 46. Facing east toward Burgess Run. 3/16/2020.



Photo 47. Undisturbed slope, facing north. 3/16/2020.

Southwest Area



Photo 48. Facing northeast, showing excavation. 3/16/2020.



Photo 49. Edge of excavation and trees at top of ridge, facing east. 3/16/2020.

Southwest Area



Photo 50. Brush piles along west edge of dirt road, facing south. 3/16/2020.



Photo 51. Facing south along dirt road. 3/16/2020.

Southwest Area



Photo 52. Facing west showing brush piles. 3/16/2020.



Photo 53. Facing north toward Polo Blvd. 3/16/2020.

Southwest Area



Photo 54. Facing east, showing historic trash dump at right of photo.

Appendix B

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

Conservation Easement

This Deed of CONSERVATION EASEMENT is made the XXth day of MONTH, YEAR.

Whereas, NAME, the Grantors, for the considerations paid by The Board of County Commissioners of Mahoning County, Ohio, and The Board of Trustees of Poland Township, Mahoning County, Ohio, and under the authority of Ohio Revised Code 5301.67, *et seq.*, hereby grant unto the said Board of County Commissioners of Mahoning County, Ohio and Board of Trustees of Poland Township, Mahoning County, Ohio, and their assigns, a CONSERVATION EASEMENT in perpetuity on the real estate consisting of the “proposed conservation easement” area (hereafter the “easement property”) identified in Exhibit 1.

[Append a LEGAL DESCRIPTION AND A SURVEY WITH A MAP for the easement property identified in Exhibit 1. Include references to permanent benchmarks for the boundaries of the easement areas.]

Said Grantors covenant on behalf of themselves, and their heirs, administrators, executors, assigns, and successors in interest with the said Grantees and their assigns to do and refrain from doing, severally and collectively, upon the Grantors’ said easement property, the various acts hereinafter mentioned, it being agreed and expressed that the doing and refraining from said acts, and each thereof upon said easement property, is and will be for the benefit of Mahoning County, Ohio, will preserve the area identified as the easement property in Exhibit 1, and will protect the natural value of the lands of the Grantors described above.

Said Grantors also represent that it/they own the easement property and hold fee simple title to the easement property subject to this CONSERVATION EASEMENT. Further, said Grantors represent that no other person holds an interest in or encumbrance on the easement property that may be in conflict with the activity and use limitations set forth in this CONSERVATION EASEMENT. To the extent that any other interests in or encumbrances on the easement property conflict with the activity and use limitations set forth in this CONSERVATION EASEMENT, Grantors represent that the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the CONSERVATION EASEMENT as an “environmental covenant” pursuant to Ohio Revised Code § 5301.86, and the subordination agreement(s), which are attached as Exhibit 2 to this CONSERVATION EASEMENT and which were recorded at [name of County Recorder’s Office].

[A copy of any subordination agreement will be attached to this CONSERVATION EASEMENT as Exhibit 2.]

The restrictions hereby imposed upon the use of said easement property of the Grantors and the acts that said Grantors so covenant to do and refrain from doing upon their said property in connection therewith are and shall be as follows:

1. The easement property herein described shall be kept in the natural state. As herein used, the term “natural state” is intended to mean that no buildings or other man-made modifications of any kind, either temporary or permanent, shall be placed or erected on

the easement property, nor shall there be any commercial activity, industrial development, or drilling of wells for production of oil, gas, or other related products on the easement property.

2. There shall be on or in the easement property no fillings, excavating, removal of top soil, sand, gravel, rock, minerals, or other materials nor any building of roads or change in the topography of the land in any manner, other than that caused by force of nature.
3. There shall be no spraying with herbicides or pesticides on the easement property, except as needed for any required invasive species management.
4. No power transmission lines may be erected, nor shall any interests in the easement property be granted for this purpose. It is the intent of this provision to grant to said Grantees and their assigns such interest in said easement property as is sufficient to prohibit the exercise of the power of eminent domain by public utility companies and any other body or persons. The Grantors reserve the right to maintain or repair existing telephone, electric, water wells, or any other utility lines needed to provide for the needs of the Grantors and their devisees, assigns, or successors in interest. The area needed to maintain and repair shall be the minimum necessary to accomplish the task as agreed in writing by the Grantors and the Grantees. Upon completion, the area shall be restored to its previous state or as near as practicable.
5. No trees, ground cover, or other vegetation shall be removed, including that no mowing shall occur on the easement property, except as directed by EPA or the Grantee for any required invasive species management.
6. The lands on the easement property shall at all times be kept free of garbage, trash, and machinery, and no other unsightly material shall be allowed to accumulate or be stored thereon.
7. Every other activity or construction which might endanger the natural or scenic state of the easement property is forbidden.
8. There shall be no dredging, straightening, filling, channelizing, impeding, diverting, or otherwise altering natural water courses and streams on, and riparian buffers adjacent to, the easement property.
9. There shall be no division or subdivision of the easement property.
10. The Board of County Commissioners of Mahoning County, Ohio, and The Board of Trustees of Poland Township, Mahoning County, Ohio, reserve the right to periodically inspect the said easement property for violations of this CONSERVATION EASEMENT and upon thirty (30) days advance notice, to remove or eliminate at the expense of the landowner any violation of the CONSERVATION EASEMENT. Grantees or their authorized representatives may enter upon said lands for the purpose of inspection.

The CONSERVATION EASEMENT granted hereunder and the covenants heretofore made are subject to the following rights of the Grantors, which are expressly reserved hereunder.

Except as expressly limited herein, the Grantors reserve for themselves, their heirs, assigns, and successors in interest, all rights as owner of the easement property, including the right to use the easement property for all purposes not inconsistent with this grant.

This CONSERVATION EASEMENT shall run with the land.

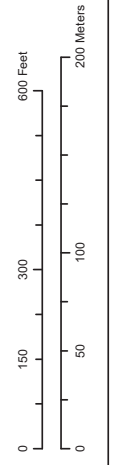
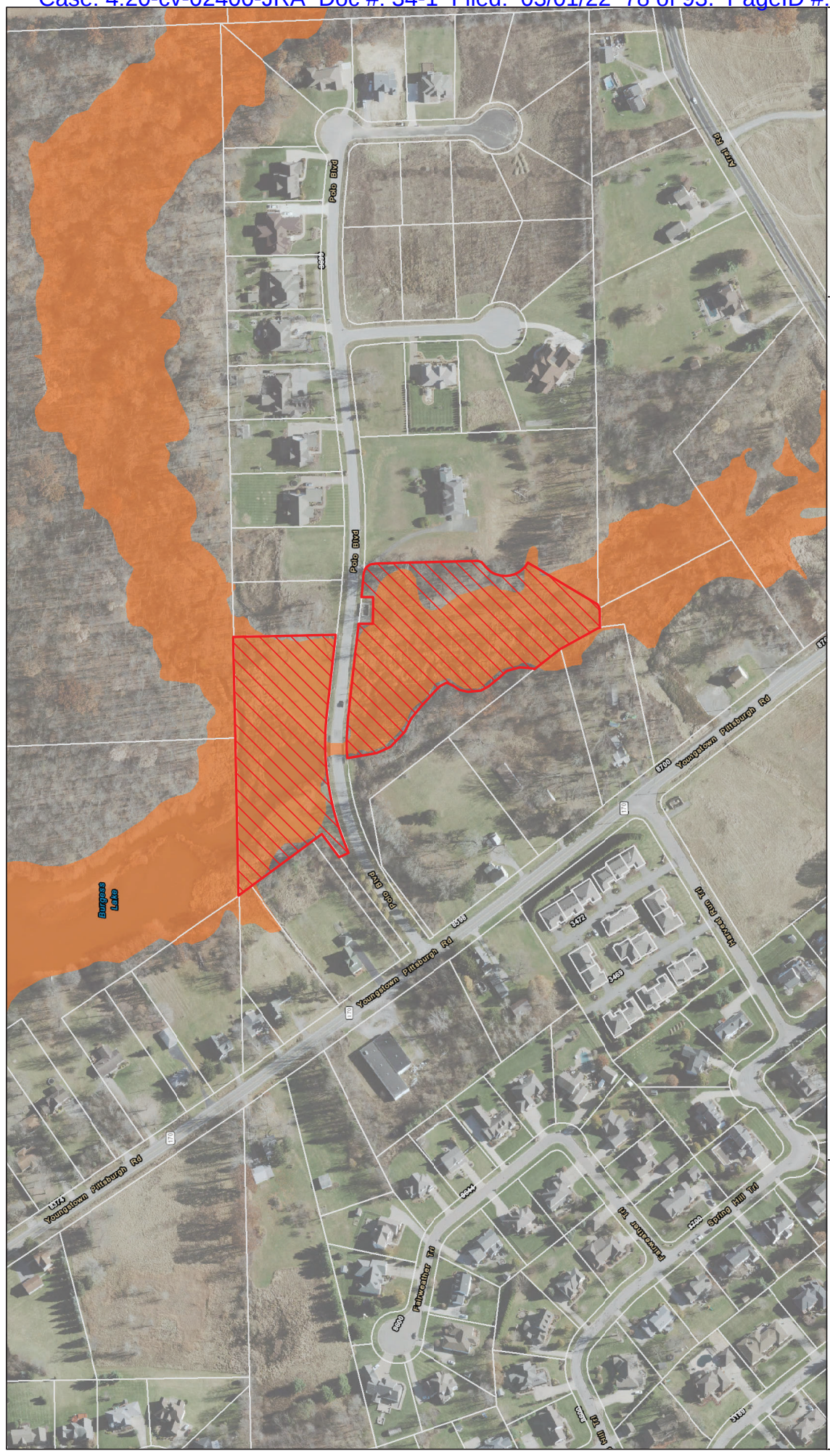
Appendix B

Exhibit 1

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400






-  Proposed Conservation Easement
-  100-Year Flood Zone
-  Parcel Boundary

Figure 7.
Proposed Conservation Easement
for the Polo Development Site,
Poland Township, Mahoning County, Ohio.

Basemap courtesy of Esri.

Appendix C

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	
)	Civil Action No. 20-cv-2400
)	
v.)	Hon. Judge John R. Adams
)	
)	
POLO DEVELOPMENT, INC.;)	
AIM GEORGIA, LLC.;)	
JOSEPH ZDRILICH;)	
DONNA ZDRILICH; and)	
CARBON HILLS, LLC,)	
)	
Defendants.)	
)	
)	
)	

ORDER OF DEPOSIT AND INVESTMENT

On this day came to be heard Defendants’ request to deposit funds into the registry of the Court. Said funds shall be placed in interest-bearing Government Account Series securities via the Court Registry Investment System (“CRIS”) administered by the Administrative Office of the United States Courts; it is therefore,

ORDERED that the Clerk accept and deposit into the registry of the Court the deposit made by in this cause of action in the amount of \$15,000; it is further

ORDERED that the Clerk promptly and properly invest those funds into Government Accounting Series securities through the CRIS and direct the custodian to deduct the CRIS fee of an annualized ten (10) basis points on assets on deposit for all CRIS funds, excluding the case

funds held in Disputed Ownership funds, for the management of investments in the CRIS.

According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 202_.

Honorable John R. Adams
United States District Judge

Appendix D

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

Polo Lot 31 Restoration Plan

This mitigation plan is prepared by the United States Environmental Protection Agency (“EPA”) to resolve issues between The Zdrilich Law Group, LLC (“TZL”), on behalf of Defendants in *United States v. Polo Development, et al.*, 20-cv-2400 (N.D. Ohio), and Plaintiff United States of America. The mitigation plan includes the re-establishment/rehabilitation of wetlands onsite as compensatory mitigation for unauthorized impacts to 0.10 acre of wetlands on Lot 31, previously part of Lot 7 (hereinafter referred to as “Lot 31”). The plan includes a total of 0.10 acres of wetland restoration and builds upon the mitigation plan prepared by EnviroScience (Project number 12920). The final mitigation plan shall meet both federal and state wetland regulatory requirements.

I. Existing Physical Conditions

- A. An annotated version of the June 6, 2020 delineation by EnviroScience (Exhibit 1), and photos from the site inspection (Exhibit 2), detail the current condition of the site. The pink shaded area along the mapped ditch in Exhibit 1 outlines the extent of the 2020 fill, which can also be seen in site inspection photos 48-52 in Exhibit 2.
- B. Lot 31 is part of Donna Zdrilich’s property, which sits southwest of the Zdrilich home, in a residential development. The ditch that runs through Lot 31 flows west through the woods toward Burgess Run and appears to pool out several feet from the edge of the bank. The ditch runs through a wetland that was delineated by EnviroScience by June 6, 2020 (Exhibit 3). During the inspection conducted on May 14, 2021, Joseph M. Zdrilich, Sr., stated that he had widened the ditch within the last three years and placed the fill adjacent to the ditch on both sides of the ditch. He modified the ditch to drain the southernmost depression on Lot 7 (now referred to as Lot 31) for recent and future development. The material sidecast from the ditch widening impacted approximately 0.10 acres of wetland on Lot 31 that is hydrologically connected to Burgess Run, a perennial stream.

II. Proposed Physical Conditions

- A. The June 6, 2020 delineation by EnviroScience (Exhibit 3) details the site conditions prior to the ditching and fill. After restoration, Lot 31 will feature a restored ditch and returned wetland hydrology to the wetlands identified in the June 2020 delineation.
- B. The side-cast fill placed adjacent to the ditch must be returned to the ditch, with a ditch plug installed at the downstream end of the impacted portion of the ditch. The ditch must be restored to its original condition, as it was prior to widening. The goal of the recontouring and plugging is to reduce bankfull depth as much as possible long-term to restore pre-disturbance hydrology to the site and to eliminate draining wetland areas within Lot 31. The equipment to be used is limited to hand tools and/or small mechanized equipment (i.e., bobcat) to reduce impacts to the surrounding area. Appropriate soil erosion and sediment controls must be used and maintained to prevent disturbance of downstream waters and wetlands. The controls must be in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized after

completion of construction of the recontoured ditch. Ditch recontouring will occur in early spring 2022, prior to June 15.

- C. The bare soil in and around the ditch is to be seeded with a native wetland seed mix such as ERNMX 120. It may be the same seed mix chosen to seed the Northwest Area. Seed installation will occur after the ditch recontouring is complete, but no later than in early spring 2022, prior to June 15.
- D. No additional placement of fill will occur beyond what is required in this plan. Excavation, vegetation clearing, or mowing is not to be conducted in Lot 31, unless a Clean Water Act (“CWA”) section 404 permit is issued by the U.S. Army Corps of Engineer (the “Corps”) for such activity.

III. **Performance Criteria**

- A. Restored wetland areas along the ditch as identified in pink in the June 6, 2020 map by EnviroScience (Exhibit 1) must meet wetland criteria (soils, hydrology, and vegetation) as established in the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual and the applicable Regional Supplement:
 - a. Predominance of hydrophytic vegetation;
 - b. Presence of hydric soils; and
 - c. Presence of wetland hydrology.

IV. **Monitoring**

- A. Within thirty (30) days after the restored area is recontoured and seeded, but no later than July 15, 2022, Defendants must submit an as-built report describing the environmental conditions at the site and assessing the success or failure of restoration. The report must include photographs, identify any problems discovered, and recommend corrective actions.
- B. Monitoring the wetland shall occur for at least five (5) years to achieve the aforementioned performance standards. During this period, Defendants shall take steps necessary to ensure that the performance standards are met. Also, during the monitoring period, Defendants shall submit to EPA an annual monitoring report by December 31 of 2022 through 2026. Each of the monitoring reports shall be submitted electronically and shall include the following:
 - a. Photo documentation (dated and clearly labeled with the direction from which the photo was taken) of the wetland area where restoration activities are undertaken; and
 - b. Identification of any problems encountered and corrective actions taken during the previous monitoring year.

V. **Inspections**

- A. Defendants will allow federal and state agencies or their designees access to the site for inspections.

VI. **Summary**

- A. In early Spring 2022, prior to June 15, the ditch on Lot 31 must be plugged and restored to its original contours, using hand tools and/or small mechanized equipment (i.e., bobcat), and the bare soil in and around the ditch is to be seeded with a native wetland seed mix such as ERNMX 120.
- B. Within thirty (30) days after the restored area is recontoured and seeded, but no later than July 15, 2022, Defendants must submit a report describing the environmental conditions at the site and assessing the success or failure of restoration.
- C. Annual monitoring reports must be submitted to EPA for five (5) years, by December 31 of 2022 through 2026.
- D. No additional placement of fill beyond what is required in this plan, excavation, vegetation clearing, or mowing is to be conducted in Lot 31, unless a CWA section 404 permit is issued by the Corps for such activity.

Appendix D

Exhibit 1

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

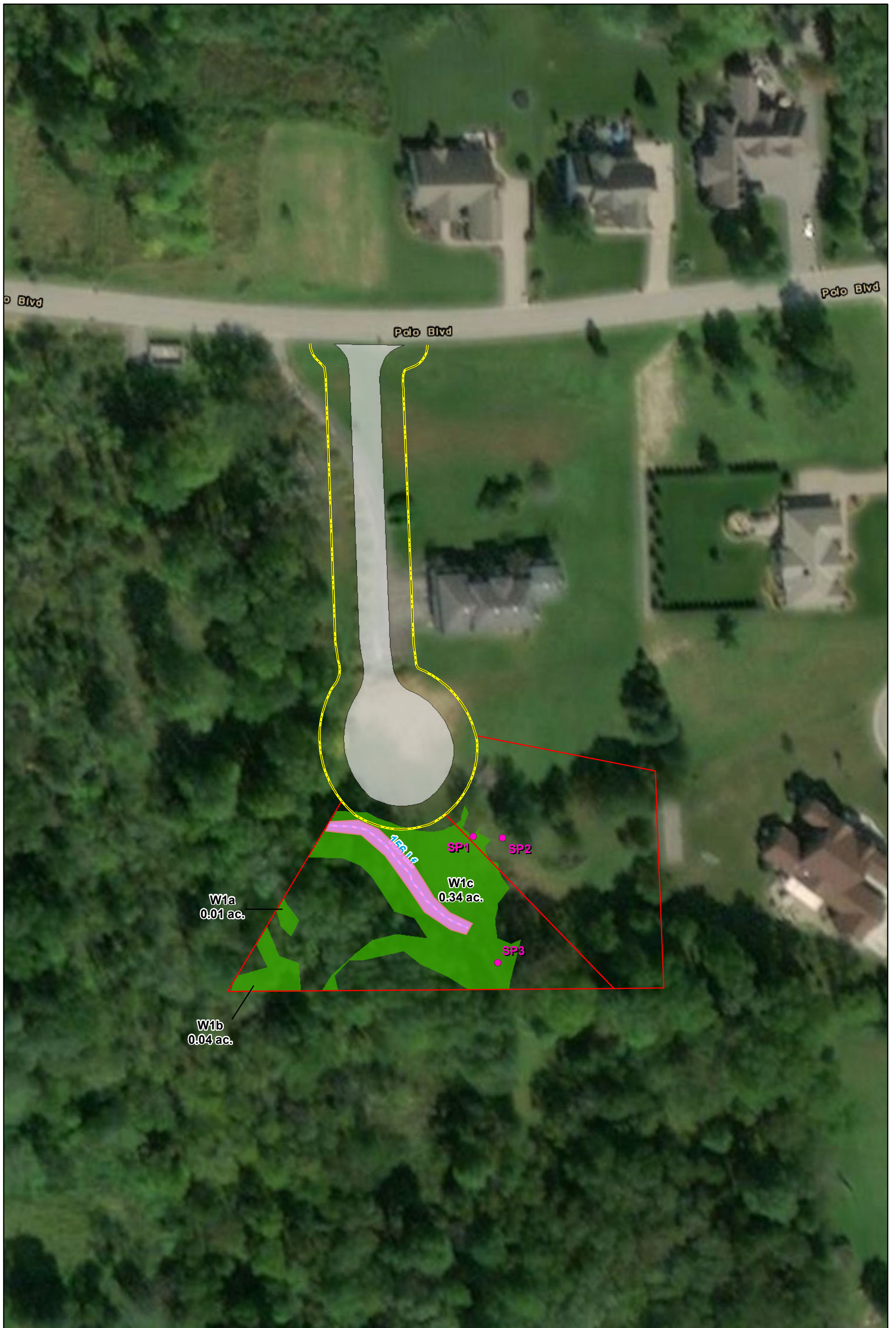
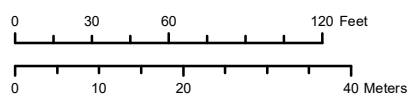


Figure 5. Site Map of Proposed Parcels for Polo Place.

- Sample Plot
- Road Right-of-Way
- Ditch
- Wetland (PEM)
- Proposed Parcels



Appendix D

Exhibit 2

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400



47: DSCN0083

Description: water marks, drainage patterns showing wetland connection to Burgess Run

Location: west of Lot 7 in woods adjacent to Burgess Run: 40.993098, -80.583889

Camera Direction: Southwest

Date/Time: 5/14/21 11:51



48: DSCN0084

Description: north side of ditch and 2020 fill on Lot 7

Location: Lot 7: 40.993046, -80.583286

Camera Direction: East

Date/Time: 5/14/21 12:15



49: DSCN0085

Description: ditch and 2020 fill on Lot 7

Location: Lot 7: 40.993, 80.58328

Camera Direction: East

Date/Time: 5/14/21 12:15



50: DSCN0086

Description: ditch on Lot 7 with 2020 fill

Location: Lot 7: 40.992973, -80.583188

Camera Direction: East

Date/Time: 5/14/21 12:15



51: DSCN0087

Description: Southernmost end of ditch on Lot 7

Location: Lot 7: 40.992818, -80.583058

Camera Direction: East

Date/Time: 5/14/21 12:15



52: DSCN0088

Description: 2018 and 2020 fill on Lot 7

Location: Lot 7: 40.992823, -80.583027

Camera Direction: North

Date/Time: 5/14/21 12:15

Appendix D

Exhibit 3

Consent Decree

United States v. Polo Development, et al.

Case No. 20-cv-2400

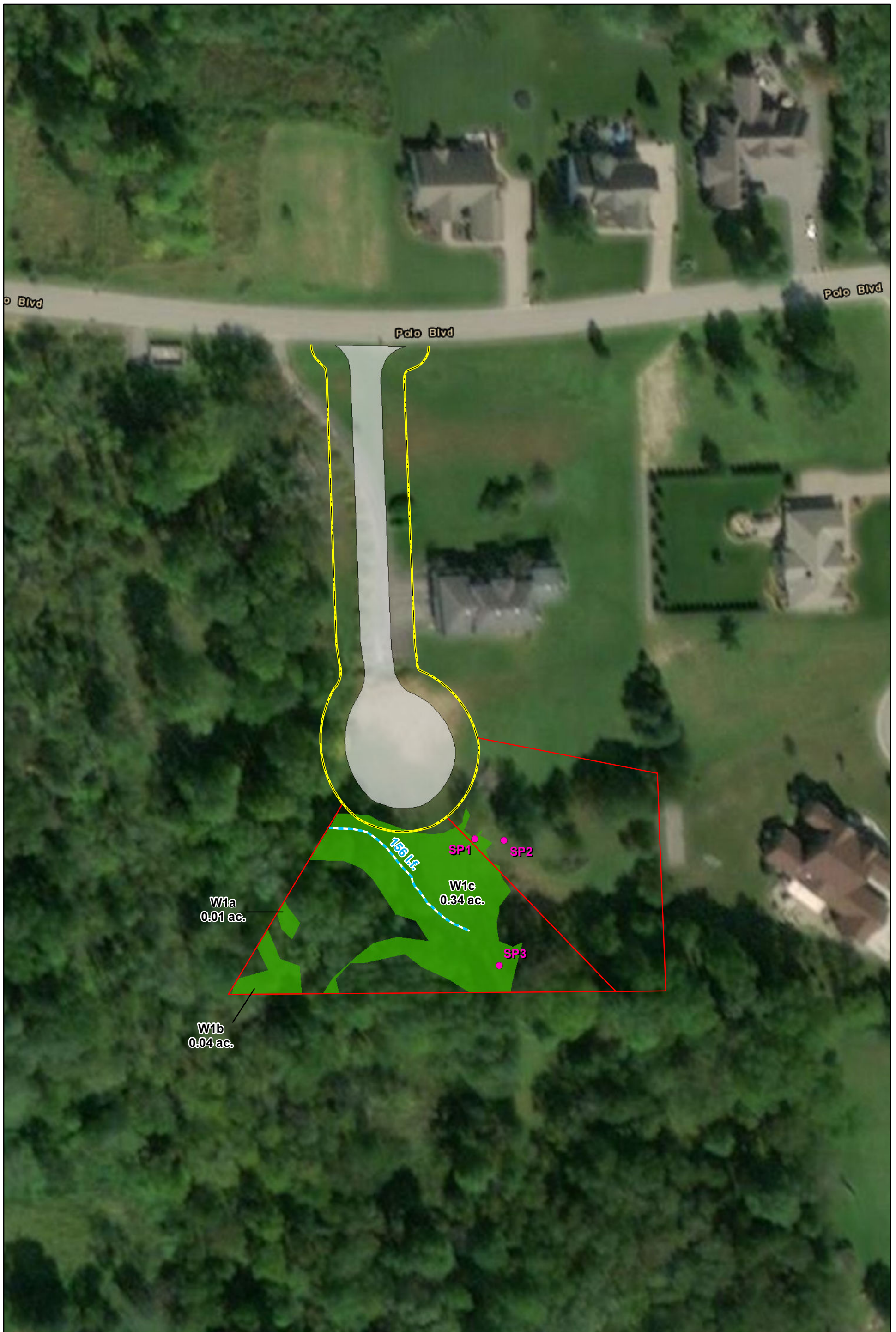


Figure 5. Site Map of Proposed Parcels for Polo Place.

- Sample Plot
- Road Right-of-Way
- Ditch
- Wetland (PEM)
- Proposed Parcels

