

WHEREAS, the Complaint seeks: (1) to permanently enjoin Defendants from discharging or causing the discharge of dredged material, fill material, sediment, and any other pollutants into any waters of the United States except in compliance with the CWA; (2) to require Defendants, at their own expense and at the direction of the EPA and/or the Corps, to effect complete restoration of waters of the United States, including wetlands, on the Site and/or to conduct off-site mitigation for irreversible environmental damage; and (3) to require Defendants to pay civil penalties for each day of each violation of the CWA, as provided in 33 U.S.C. § 1319(d);

WHEREAS, Sea Bay Development Corp., Beechtree Park, Inc. and Green Sea Farms LLC (collectively the “Sea Bay Defendants”) are farming certain portions of the Site and have advised the United States that they intend to continue farming and may develop certain portions of the Site;

WHEREAS, the Sea Bay Defendants assert that no violations of the CWA have occurred due to several defenses, including, but not limited to, that the areas into which discharges of dredged or fill material were made do not constitute waters of the United States, that any such discharges qualified as non-prohibited discharges under Section 404(f) of the CWA, 33 U.S.C. § 1344(f)(1), and that the Corps authorized such discharges;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of the civil claims under the CWA which were or could have been brought by the United States against the Sea Bay Defendants regarding the Site, up to the date of entry of this Decree;

WHEREAS, the United States and the Sea Bay 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 against the Sea Bay 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 the Sea Bay Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law,

THEREFORE, 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 jurisdiction over the subject matter of this action and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

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

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

II. APPLICABILITY

4. The rights and obligations of this Consent Decree shall apply to and be binding upon the Sea Bay Defendants, their officers, directors, agents, employees, representatives and servants, and their successors and assigns and any person, firm, association, partnership or corporation who is, or will be, acting in concert or participation with any of the Sea Bay Defendants, and upon the United States, including all of its departments, agencies, and

instrumentalities, its officers, employees, representatives and agents, whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Sea Bay Defendant, the Sea Bay Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, representatives, servants, and their successors and assigns or any person, firm, association, partnership or corporation acting in concert or participation with the Sea Bay Defendant, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the Site shall not alter or relieve the Sea Bay 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 Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Sea Bay Defendant(s) making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree.

III. SCOPE OF CONSENT DECREE

6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties that were or could have been alleged against the Sea Bay Defendants under the CWA concerning the Site, up to the date of entry of this Decree. The United States covenants not to sue the Sea Bay Defendants and releases them from liability for such claims.

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 the Sea Bay Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

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

9. This Consent Decree authorizes any dredged or fill material that was placed on the Site by Defendants as of April 1999 to remain in place, subject to the conditions of this Consent Decree. This Consent Decree further authorizes the discharge of dredged or fill material in the area identified as the Remedy Area in Figure 1 insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree, as specifically set out in the Wetlands Project in Section IV. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of this Consent Decree.

10. Except as specifically authorized in this Consent Decree, this Consent Decree in no way affects or relieves the Sea Bay Defendants' responsibility to comply with any applicable federal, state, or local law, regulation or permit.

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

12. 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.

13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law. However, if the United States elects to seek both stipulated penalties and civil or administrative penalties from the Sea Bay

Defendants for the same violation, any recovery of stipulated penalties would be offset by the amount awarded to the United States in civil or administrative penalties, or vice versa.

14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party. Further, the Sea Bay Defendants do not admit any liability arising out of the transactions or occurrences alleged in the Complaint.

IV. REMEDY

15. Designation of the Potential Development Area and Remedy Area Within the Site.

The United States and the Sea Bay Defendants agree that the Site shall be divided into two separate areas, the Potential Development Area (“PDA”) and the Remedy Area (“RA”), as specifically delineated on Figure 1, which is hereby incorporated by reference as an enforceable part of this Consent Decree. The PDA consists of Fields 1 - 4 and Areas A - M as delineated on Figure 1. The lateral boundaries of the PDA with respect to road corridors, Areas A - M, and Fields 1 - 4 are depicted on Figures 2 and 3 respectively, which are hereby incorporated by reference as enforceable parts of this Consent Decree. The RA consists of all other areas within the boundaries of the Site which lie outside of the lateral limits of the PDA as defined above and in Figures 1 - 3.

16. Survey. No later than sixty (60) days after entry of the Consent Decree, the Sea Bay Defendants will have a survey initiated to precisely define the limits of the RA and the PDA. Assuming normal weather conditions, all survey work shall be completed within ninety (90) days thereafter. The Sea Bay Defendants will tender the survey to EPA, and unless EPA objects within thirty (30) business days, the survey will become effective and be incorporated by reference into this Decree and will supersede the boundaries of the RA and PDA currently set out in Figure 1.

17. Remedy Area. The parties agree that the RA is a “water of the United States” under the CWA. Any discharges of dredged or fill material encompassed within the Wetlands Project as set forth in this Section and Section III, paragraph 9, are authorized by this Consent Decree and will not require a permit under Section 404 of the CWA, 33 U.S.C. § 1344. The RA shall be protected by a Preservation Project, consisting either of the establishment of a conservation easement or deed restrictions, as provided in paragraphs 26 - 30 of this Section.

18. Potential Development Area. The parties further agree that this Consent Decree authorizes future discharges of dredged and fill material within the PDA and that permits under Section 404 of the CWA, 33 U.S.C. § 1344, are not required for any discharges of dredged or fill material within the PDA.

19. Deed Restrictions.

a. To ensure that the entirety of the RA is protected, the Sea Bay Defendants shall, within sixty (60) days of entry of this Consent Decree or within sixty (60) days of the effective date of the survey, whichever is later, adopt deed restrictions on the PDA that will run with the land in perpetuity and provide as follows:

i. No storm water ponds may be located within 50 feet of the RA. In the event that storm water ponds are located between 51 and 200 feet of the RA, such storm water ponds shall be constructed using measures, such as clay lining, to protect against dewatering the RA.

ii. No borrow pits may be located within 500 feet of the RA.

iii. No drainage ditch constructed after entry of the Consent Decree shall be located within 200 feet of the RA, unless: (a) the ditch is perpendicular to the RA line, in which case it may be located no closer than 50 feet from that line; or (b) the ditch is a roadside

ditch located in Areas C, H, I, or J as identified in Figure 1, in which case appropriate measures (such as clay lining) must be adopted to minimize the dewatering of the RA; provided, however, that this restriction does not prohibit the use of swales within 200 feet of the RA to control, collect, and convey local surface storm water runoff generated within the PDA. Such swales would require that a berm be created within the PDA between the swale and the RA as depicted in Figure 5, which is hereby incorporated by reference as an enforceable part of this Consent Decree. Such swales will be restricted in depth to be no deeper than any existing ditch at that location, or no deeper than 2.5 feet when an existing ditch is not present. Side slope angles will be dictated by any applicable City of Chesapeake requirements.

iv. Any development project in the PDA must allow for the normal passage of water flow and wildlife through Areas C, H, I, and J as identified in Figure 1.

b. In order to prevent flooding of existing or future agricultural activities and development within the PDA and, at the same time, protect the RA, when the Sea Bay Defendants or their successors or assigns adopt a conservation easement or deed restrictions, pursuant to Paragraphs 26-30, the following rights and restrictions shall be retained:

i. the right of entry and of access to the RA for the maintenance of adequate drainage of the central collector ditch from Area J to the western property line in Area M, the ditch connecting Field 3 to the central collector ditch, and the two ditches outside the southwest corner of Field 3, which together drain to Area F, as identified in Figure 1. The Sea Bay Defendants agree to provide EPA and, if a conservation easement is granted, the grantee, with a proposed maintenance plan forty-five (45) days prior to conducting such maintenance work. If EPA approves the maintenance plan, or does not respond within the forty-five (45) day period, then the Sea Bay Defendants may proceed with the maintenance work. If EPA suggests

modifications to the maintenance plan, the Sea Bay Defendants shall either adopt those modifications and proceed with implementation, or initiate dispute resolution pursuant to Section VII. Notwithstanding any of the foregoing, in exigent circumstances, the parties agree to expedite this review to expedite needed maintenance. Nothing in this paragraph waives any requirement to obtain local, state, or federal permits, if required. However, this Consent Decree authorizes future discharges of dredged and fill material necessary for such maintenance work and for access to perform that work, if EPA has approved the plan for maintenance and access submitted to it by the Sea Bay Defendants, or does not respond within forty-five (45) days of the Sea Bay Defendants' submittal to EPA. Notwithstanding the above, the Sea Bay Defendants may proceed to the extent that the maintenance work and access to perform that work are authorized or exempt under the CWA.

ii. Utility lines may not be located in the RA unless the Sea Bay Defendants or their successors or assigns establish that, for technical and engineering reasons, utility lines must be located within the RA and that without such utilities in such location the design of the development of the PDA would not be possible. Cost shall not be a factor in consideration of the preceding sentence.

c. The deed restrictions shall be recorded, along with a certified copy of this Consent Decree and all attachments thereto, with the Recorder of Deeds Office, in the City of Chesapeake, Virginia. Thereafter, each deed, title, or other instrument conveying an interest in any portion of the RA or the PDA shall contain the deed restrictions and 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.

20. Activities Within the RA. The parties agree that the RA will undergo improvements to its hydrology through the Wetlands Project as set forth in paragraphs 21-25 and will be preserved in perpetuity under a conservation easement or deed restrictions through the Preservation Project as set forth in paragraphs 26-30, subject to paragraph 19. Until such time as the conservation easement or deed restrictions are recorded, no other activities except those set forth in paragraph 19(b) shall occur in the RA. Thereafter, the provisions of the Preservation Project as set forth in paragraphs 26-30, subject to paragraph 19, will apply.

21. Wetlands Project. The Sea Bay Defendants shall perform the Wetlands Project as described below in paragraphs 21-25. The Wetlands Project will plug specified ditches to improve hydrology while simultaneously ensuring that the Wetlands Project does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years.

22. Ditch Plugs. The Wetlands Project will consist of the placement of ditch plugs in the approximate locations identified in Figure 1. Ditch plugs located adjacent to a road will be placed on the upstream side of the road to prevent the undermining of the structural integrity of the road. As identified in Figure 1, the ditch plugs will either be placed to the top of the ditch and have side slopes in the approximate configuration depicted in Figure 4, which is hereby incorporated by reference as an enforceable part of this Consent Decree, or be blocked 12 inches above the bottom of the ditch, and otherwise follow the approximate configuration depicted in Figure 4. The ditch plugs shall be mechanically compacted, shall consist of suitable earthen material that will minimize erosion or other damage to their structural integrity, and shall be naturally stabilized with vegetation or sediment, as appropriate.

23. Ditch Plug Integrity. All ditch plugs will be monitored for physical integrity, through photographs and inspection, upon completion of installation of all ditch plugs and every six (6) months thereafter for a period of two (2) years, in order to determine the existence of seeps, leaks, weeps, erosion or any other physical indication that surface or groundwater is moving away from the plugged area. If any inspection reveals water loss that threatens the structural integrity of one or more of the ditch plugs, the Sea Bay Defendants will propose to EPA remedial measures within thirty (30) days. In the event that Sea Bay Defendants discover, through other means, that water from the plugged ditches is finding another natural or created outlet or that a new or unexpected drainage pattern has emerged, the Sea Bay Defendants will report their finding and propose remedial measures to EPA within a reasonable period of time, not to exceed ninety (90) days. The Sea Bay Defendants will implement and complete approved remedial measures within thirty (30) days of receipt of EPA approval, assuming normal weather conditions, or within a longer period as agreed to in writing by EPA and the Sea Bay Defendants.

24. Monitoring. The Sea Bay Defendants shall install bore holes at the approximate locations identified as numbers 1 - 3 on Figure 1. The Sea Bay Defendants shall monitor the bore holes one time per week from the on-set of the growing season (typically March 15) until the groundwater table drops below 18 inches and does not move significantly toward the surface after rain events (typically mid to late May), but in no case longer than twelve (12) weeks per year. Monitoring will occur for a period of two (2) years, beginning in the first growing season subsequent to final installation of the ditch plugs.

a. The Sea Bay Defendants shall provide to the United States an annual report of the monitoring results not later than sixty (60) days after the end of each year's monitoring period.

b. A bore hole shall be determined to have attained wetlands hydrology when, during a normal or below-normal rainfall year, the bore hole shows saturation within 12 inches of the surface for fifteen (15) days or more during the growing season.

c. At the end of the first year of monitoring, if the report shows that any bore hole has attained wetlands hydrology during a normal or below-normal rainfall year, the Wetlands Project will be complete as to that modified ditch plug, and no further monitoring will be required in that location.

d. At the end of the first year of monitoring, if the report shows that any bore hole has not attained wetlands hydrology in a normal rainfall year, the parties shall agree upon physical modifications to the ditch plugs, provided, however, that any such modification does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years, which the Sea Bay Defendants will implement.

e. At the end of the first year of monitoring, if the report shows that wetlands hydrology has not been met in a below-normal rainfall year, the parties shall wait to take remedial measures, if warranted, until the report for the second year of monitoring has been submitted.

f. At the end of the second year of monitoring, if the report shows that wetlands hydrology has not been met in a normal or below-normal rainfall year, the parties shall agree upon physical modifications to the ditch plugs, provided, however, that any such modification does not cause flooding on the existing or future uses of the PDA or properties neighboring the Site during normal rainfall years, which the Sea Bay Defendants will implement.

g. Completion. Monitoring will be complete if all of the bore holes meet the standard in paragraph 24(b) or, at the conclusion of the second year of monitoring, after implementation of any physical modifications to the ditch plugs agreed to under paragraph 24(f),

and following submission of the required reports. The Sea Bay Defendants will provide the United States with notice of completion, and the United States will confirm completion within forty (40) days thereafter unless the parties agree in writing to a longer time. If the United States does not respond within forty (40) days, or a longer time if agreed to by the parties in writing, the completion will be deemed confirmed. Irrespective of the monitoring results, the Sea Bay Defendants' obligation to monitor will last no more than two growing seasons.

25. Schedule. Assuming seasonal or weather conditions permit and that there are no significant mechanical problems with construction equipment, the Sea Bay Defendants shall commence the Wetlands Project, as described in paragraph 22, on or about May 15, 2008. Assuming seasonal or weather conditions permit and that there are no significant mechanical problems with construction equipment, all work shall be completed by October 15, 2008. This schedule is irrespective of when or whether the PDA is developed.

26. Preservation Project. The Sea Bay Defendants shall also perform a Preservation Project for the RA. The Preservation Project shall consist of either the establishment of a conservation easement substantially similar to the model conservation easement attached as Exhibit 1 to this Consent Decree or the imposition of deed restrictions embodying substantially the same restrictions on use as set forth in Exhibit 2.

27. Preservation in Perpetuity and Restrictions on Use. The conservation easement or deed restrictions will preserve the RA in perpetuity and will prohibit mowing, cutting, clearing, cultivating, dredging, excavation, farming, filling, dewatering, draining, or any other significant disturbance or alteration of the RA, provided, however, that the conservation easement and deed restrictions will be subject and subordinate to the rights retained by, and the restrictions on, the

Sea Bay Defendants, their successors or assigns, regarding maintenance of adequate drainage and utility lines in paragraph 19(b).

28. Good Faith Efforts to Identify Grantees for Conservation Easement.

a. Following EPA's confirmation that monitoring is complete as to all bore holes pursuant to paragraph 24(g), the Sea Bay Defendants shall make a good faith effort for up to 180 days to identify one acceptable conservation easement grantee from among the following four potential grantees, all of which have been approved by EPA: The Nature Conservancy, Virginia Outdoors Foundation, the City of Chesapeake, and the Land Trust of Virginia. To be an acceptable grantee, the grantee must be willing to:

i. Accept the RA subject to the terms and conditions of this Consent Decree and the easements and restrictions established pursuant to this Consent Decree (including paragraph 19(b) concerning the right of access to the RA for certain limited purposes); and

ii. Enter into a conservation easement substantially similar to the model conservation easement attached as Exhibit 1 to this Consent Decree. If the grantee requires payment of an endowment to support maintenance of the conservation easement, the Sea Bay Defendants agree to pay an endowment that is reasonable in light of local standards.

b. If an acceptable grantee is identified, the Sea Bay Defendants will provide EPA with a draft of a proposed conservation easement that is substantially similar to the model conservation easement attached as Exhibit 1. EPA may suggest revisions to the conservation easement that are in keeping with the model conservation easement attached as Exhibit 1 within forty-five (45) days. If EPA does not suggest revisions within forty-five (45) days, the Sea Bay Defendants may record the easement. If EPA suggests revisions, the Sea Bay Defendants and the

grantee may accept those revisions and record the easement not later than sixty (60) days thereafter, or the Sea Bay Defendants may initiate dispute resolution pursuant to Section VII.

29. If the Sea Bay Defendants, despite their good faith efforts pursuant to paragraph 28, are unable to identify an acceptable conservation easement grantee, then they shall submit to EPA deed restrictions substantially similar to the deed restrictions attached as Exhibit 2. EPA may suggest revisions to the deed restrictions that are in keeping with the model deed restrictions attached as Exhibit 2 within thirty (30) days. If EPA does not suggest revisions within thirty (30) days, the Sea Bay Defendants shall record the deed restrictions. If EPA suggests revisions, the Sea Bay Defendants may accept those revisions and record the deed restrictions, or initiate dispute resolution pursuant to Section VII.

30. The conservation easement or deed restrictions will be incorporated into and become a requirement of the Consent Decree. The Sea Bay Defendants shall grant the conservation easement or impose the deed restrictions and record the conservation easement or deed restrictions in the Recorder of Deeds Office, in the City of Chesapeake, Virginia, at any time after entry of the Decree or as described in paragraphs 28 and 29. In the event that deed restrictions are recorded, each subsequent deed, title, or other instrument conveying an interest in the RA shall contain the deed restrictions and 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. Any disputes over the conservation easement or deed restrictions shall be subject to the Dispute Resolution provisions set forth in Section VII of the Consent Decree.

31. If the conservation easement or deed restrictions are found to be defective or illegal at any time, the United States may enforce this Consent Decree against the Sea Bay Defendants,

or their successors or assigns, to obtain the granting of either a conservation easement or deed restrictions for the RA that complies with applicable law.

32. When the Sea Bay Defendants have installed and monitored the ditch plugs in accordance with the provisions of paragraphs 22 - 24 , the obligation of the Sea Bay Defendants to perform the Wetlands Project will be satisfied and the Wetlands Project will be deemed complete for the purposes of Section XV, Termination. The obligation of the Sea Bay Defendants to perform the Preservation Project will be satisfied, and the Preservation Project will be deemed complete for purposes of Section XV, Termination, when the Sea Bay Defendants record a conservation easement or deed restrictions in accordance with the provisions of paragraph 30.

V. NOTICES AND OTHER SUBMISSIONS

33. Within 40 days after the deadline for completing any task set forth in Section IV of this Consent Decree, the Sea Bay Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

34. If the required task has been completed, the notice shall specify the date when it was completed. If the required task has not been completed, or was completed after the deadline, then the notice shall explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.

35. In all documents submitted to the United States pursuant to this Consent Decree, the Sea Bay Defendants shall, by signature of a senior management official or of an agent designated to act on behalf of all the Sea Bay Defendants, certify such notices 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.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

36. The Sea Bay 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 Section IV of this Consent Decree, regardless of any corporate retention policy to the contrary, for a period of ninety (90) days after the date of the termination of this Consent Decree. The Sea Bay 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 Section IV of this Consent Decree.

37. At the conclusion of the document retention period specified in paragraph 36, the Sea Bay Defendants shall notify the United States at least sixty (60) days prior to the destruction of any such records or documents, and, upon request by the United States, the Sea Bay Defendants shall deliver any such records or documents to EPA. If the United States does not request delivery of such records or documents within the 60-day period, then the records or documents may be destroyed. The Sea Bay Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Sea Bay Defendants assert such a privilege, they shall provide the United States with the following:

- a. The title of the document, record, or information;
- b. The date of the document, record, or information;
- c. The name and title of the author of the document, record, or information;

- d. The name and title of each addressee and recipient;
- e. A description of the subject of the document, record, or information; and
- f. The privilege asserted by the Sea Bay Defendants.

38. Inspections.

a. Until termination of this Consent Decree, the United States and its authorized representatives and contractors may, upon reasonable notice, at all reasonable times, enter the Site to:

- i. Monitor the activities required by this Consent Decree;
- ii. Verify any data or information submitted to the United States;
- iii. Obtain samples; and
- iv. Inspect and evaluate the Wetlands Project.

Nothing in this Decree waives or diminishes in any way EPA's authorities under CWA Section 308.

b. During the document retention period specified in paragraph 36, the United States may inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA, and the Sea Bay Defendants shall produce such records for inspection by the United States at a reasonable time and location.

c. 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 Sea Bay Defendants as authorized by law.

VII. DISPUTE RESOLUTION

39. 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 any Sea Bay 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 the Sea Bay Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within thirty (30) days after the end of the informal negotiations period, the Sea Bay Defendants file a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence that the Sea Bay Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

40. If the United States or the Sea Bay Defendants 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, either party may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The non-moving party shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence that the Sea Bay Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

41. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Sea Bay Defendants under this Consent Decree, except as provided in Paragraph 49 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

42. The Sea Bay Defendants shall perform the actions required under this Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event, or otherwise agreed to in writing by the United States and the Sea Bay Defendants. A Force Majeure event is defined as any event arising from causes beyond the control of the Sea Bay Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does not include, *inter alia*, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site. The Sea Bay Defendants reserve the right to assert, and the United States reserves the right to dispute, that the failure of the Sea Bay Defendants to obtain federal, state or local permits constitutes a Force Majeure event. The failure of the Sea Bay Defendants to obtain such permits due to their failure to make timely and complete permit application(s) shall not constitute a Force Majeure event.

43. If the Sea Bay Defendants believe that a Force Majeure event has affected their ability to perform any action required under this Consent Decree, they shall notify the United States within seven (7) business days after the event at the addresses listed in Section X. Such notice may be by electronic or facsimile transmission, as long as the Sea Bay Defendants subsequently provide that notice by hard copy letter. Such notice shall include a discussion of:

- a. What action has been affected; and
- b. The specific cause(s) of the delay.

Within twenty (20) days of such notice, the Sea Bay Defendants shall provide the United States with further information, including a discussion of:

- c. The length or estimated duration of the delay; and
- d. Any measures taken or planned by the Sea Bay Defendants to prevent or

minimize the delay and a schedule for the implementation of such measures.

The Sea Bay 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.

44. 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 and/or any such other date as agreed upon in writing by the parties. The Sea Bay Defendants shall coordinate with EPA to determine when to begin or resume the operations affected by any Force Majeure event.

45. 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 VII of this Consent Decree.

46. The Sea Bay Defendants shall bear the burden of proving by a preponderance of the evidence:

- a. That the noncompliance at issue was caused by an event arising from causes beyond the control of the Sea Bay Defendants, including their employees, agents,

consultants and contractors, which could not be overcome by due diligence and which delayed or prevented the performance of the affected action;

b. That the Sea Bay Defendants or any entity controlled by the Sea Bay Defendants could not reasonably have foreseen and prevented such noncompliance; and

c. The number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

47. After entry of this Consent Decree, if the Sea Bay Defendants fail to timely fulfill any requirement of the Consent Decree (including those specifically identified in the attachments to this Decree), the Sea Bay Defendants, collectively, shall, upon demand made by the United States, pay a stipulated penalty to the United States for each failure to timely fulfill each requirement of this Consent Decree as follows:

a. For Day 1 up to and including Day 30 of non-compliance--\$400.00 per day

b. For Day 31 up to and including Day 60 of non-compliance--\$1,200.00 per day

c. For Day 61 and beyond of non-compliance--\$2,200.00 per day

Such payments shall be made on or before the last day of the month following the month in which the United States demands payment.

48. 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 VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in paragraphs 39 and 40.

49. Notice of a Dispute pursuant to paragraph 39 shall stay the Sea Bay 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 the Sea Bay Defendants do not prevail on the disputed issue, stipulated penalties shall be paid by the Sea Bay Defendants as provided in this Section IX.

50. To the extent that the Court determines that a delay or other non-compliance was due to a Force Majeure event (as defined in paragraph 42 above) and that the Sea Bay Defendants could not reasonably have foreseen and prevented such delay or non-compliance, or the Sea Bay Defendants otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.

51. 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.

52. The Sea Bay Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2006V01299, EPA Region III and the DOJ case number (DJ#90-5-1-1-05061). Payment shall be made in accordance with instructions provided to the Sea Bay Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Virginia. 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, the Sea

Bay Defendants shall provide written notice, at the addresses specified in Section X of this Consent Decree.

X. ADDRESSES

53. 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:

- (i) Pamela Lazos, Mail Code 3RC20
Senior Assistant Regional Counsel
United States Environmental Protection Agency Region III
1650 Arch St.
Philadelphia, PA 19103-2029
- (ii) Jeffrey Lapp, Mail Code 3EA30
United States Environmental Protection Agency Region III
1650 Arch St.
Philadelphia, PA 19103-2029
- (iii) April Bowie, Docket Clerk, Mail Code 3RC00
United States Environmental Protection Agency Region III
1650 Arch St.
Philadelphia, PA 19103-2029

b. To the United States Department of Justice:

Cynthia J. Morris, Trial Attorney
Kenneth C. Amaditz, Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986

c. To the Sea Bay Defendants:

- (i) Ms. Christina Boshier
Sea Bay Development Corp.
P.O. Box 655
Virginia Beach, Virginia, 23451

- (ii) Ms. Christina Boshier
Beechtree Park, Inc.
P.O. Box 655
Virginia Beach, Virginia, 23451
- (iii) Ms. Christina Boshier
Green Sea Farms, LLC
P.O. Box 655
Virginia Beach, Virginia, 23451
- (iv) Virginia S. Albrecht
Karma B. Brown
Hunton & Williams LLP
1900 K St., NW
Washington, D.C. 20006-1109
Counsel for Defendants Sea Bay Development Corp., Beechtree Park, Inc., and Green Sea Farms LLC

XI. COSTS OF SUIT

54. Each party to this Consent Decree shall bear its own costs and attorneys' fees through the entry of the Consent Decree.

XII. PUBLIC COMMENT

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

XIII. CONTINUING JURISDICTION OF THE COURT

56. 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.

XIV. ENTRY AND MODIFICATION

57. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. If agreed to in writing and signed by both the United States and the Sea Bay Defendants, those parties may agree to modify deadlines in this Decree by thirty (30) days without leave of Court. Any other modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Sea Bay Defendants and approved by the Court.

XV. TERMINATION

58. Except for Paragraphs 18, 19, 36, and 37, which provisions survive any termination of this Consent Decree, the Court may terminate this Consent Decree if:

- a. The Sea Bay Defendants and the United States make a joint motion to the Court for termination of this Decree or any portion of it; or
- b. The Sea Bay Defendants make a unilateral motion to the Court to terminate this Decree after (i) through (iv) have occurred:
 - i. The Sea Bay Defendants have complied with all provisions of this Consent Decree (except for provisions of paragraphs 36 and 37, which concern post-termination document retention obligations);

ii. The Sea Bay 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;

iii. The Sea Bay Defendants have certified compliance pursuant to subparagraphs (i) and (ii) above to the Court and the United States; and

iv. Within forty (40) days of receiving such certification from the Sea Bay Defendants, the United States has not contested in writing that such compliance has been achieved;

v. In the event that the United States has not contested in writing pursuant to (iv) that such compliance has been achieved, and the United States does not oppose the Sea Bay Defendants' motion, then the Court may grant the Sea Bay Defendants' motion to terminate; or

c. If the Sea Bay Defendants make a unilateral motion to the Court to terminate this Decree, but the United States disputes the Sea Bay Defendants' compliance with subparagraphs (b) (i) and (ii) above, then the Court shall rule on the Sea Bay Defendants' motion, and, if the Court determines that the Sea Bay Defendants have complied with subparagraphs (b) (i) and (ii), it shall order the termination of the Decree.

d. After the Court orders Termination, the Court will retain jurisdiction to enforce the provisions in paragraphs 36, 37 (concerning post-termination document retention obligations), 18, and 19.

IT IS SO ORDERED.

Dated and entered this _____ day of _____, 2007.

United States District Judge

ON BEHALF OF THE UNITED STATES:

RONALD J. TENPAS
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: _____

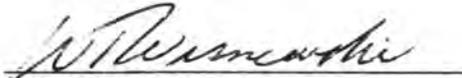
JOHN C. CRUDEN
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

Dated: _____

CYNTHIA J. MORRIS, Trial Attorney
KENNETH C. AMADITZ, Trial Attorney
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 616-7554 (Morris)
(202) 514-3698 (Amaditz)

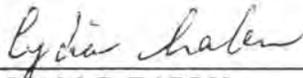
Dated: _____

WALKER B. SMITH
Director
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency



DONALD S. WELSH
Regional Administrator
U.S. Environmental Protection Agency, Region III

Dated: 10-25-07



for WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency, Region III

Dated: 10/24/07

FOR DEFENDANTS SEA BAY DEVELOPMENT CORP., BEECHTREE PARK, INC. AND
GREEN SEA FARMS LLC:

Christina E. Boshier

Ms. Christina Boshier
Vice President
Beechtree Park, Inc.

Dated: *Oct. 22, 2007*

President/Secretary
Sea Bay Development Corp.
Green Sea Farms, LLC
P.O. Box 655
Virginia Beach, VA 23451