

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JAN -8 PM 2:54
REGIONAL HEARING
CLERK

<p>In the matter of Cogi LLC.; Quaker Hills LLC. Respondents</p> <p>Parcel 134089-7156-00-653891-0000 15 Kirby Hill Road, Town of Pawling, Dutchess County, NY</p> <p>Parcel 134089-7157-00-652243-0000 468 Old Quaker Hill Road, Town of Pawling, Dutchess County, NY</p>	<p><u>CONSENT AGREEMENT AND FINAL ORDER</u></p> <p>DOCKET NO. CWA-02-2008-3601</p> <p>Proceeding Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)</p>
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CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), is herein simultaneously commencing and concluding this proceeding by the issuance of this Consent Agreement and Final Order ("CA/FO"), against Respondents Cogi LLC. and Quaker Hills LLC. ("Respondents"), and,

Complainant and Respondents having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA is initiating this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g); and 40 CFR §22.13(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("CROP"), which set forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 CFR §22.18 (b)(2) and (3).

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 306, 307, 318, 402 and 404 of the Act.
3. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill into navigable waters of the United States.
4. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
5. The discharge of the earthen fill material into waters of the United States constitutes a "discharge of pollutants" as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).
6. EPA alleges that Respondents are in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharges of pollutants consisting of earthen fill into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
7. EPA, simultaneously with the issuance of this CA/FO, is notifying the State of New York regarding this action and is offering an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
8. This action is being public noticed.

II. STATEMENT OF FACTS

9. Cogi LLC. owns tax parcel 134089-7156-00-653891-0000 ("Property 1"), consisting of 76 acres on the north side of Kirby Hill Road, with address 15 Kirby Hill Road, in the Town of Pawling, Dutchess County, NY. (See "Exhibit A").
10. Quaker Hills LLC. owns tax parcel 134089-7157-00-652243-0000 ("Property 2"), consisting of 171 acres, with address 468 Old Quaker Hill Road, in the Town of Pawling, Dutchess County, NY, to the north of and contiguous with Property 1. (See "Exhibit A".)
11. Cogi LLC. owns and operates an equestrian facility, named Cogi Farm, on Property 1 and Property 2. (See "Exhibit A").
12. A perennial stream, named Brady Brook, flows north to south from Property 2 through Property 1, and continuing southwards of Kirby Hill Road. (See "Exhibit A").

13. Forested wetlands (“the Wetlands”) exist adjacent to Brady Brook on Property 1 and Property 2. (See "Exhibit A".)
14. A perennial tributary (“the Tributary”), which flows from east to west, exists adjacent to Brady Brook on Property 2. (See Exhibit A").
15. Beginning on or about the month of April 2004, Respondents conducted or arranged for earthmoving work to be conducted on both Property 1 and Property 2 for construction of a 12.5-acre, multi-purpose equestrian field ("the Field").
16. The earthmoving work, described in paragraph 17 above, included discharge of earthen fill material into approximately 0.75 acre of the Wetlands. (See "Exhibit B").
17. Beginning on or about April 2005, Respondents conducted or arranged for earthmoving work to be conducted on Property 2 for further construction and completion of the Field.
18. The earthmoving work, described in paragraph 19 above, included diversion of the flow of water of the Tributary through an underground pipe along a more northerly alignment, and discharge of earthen fill material into 630 linear feet of the prior channel of the Tributary below Ordinary High Water. (See "Exhibit B").
19. Respondents conducted the discharge of fill material described in Paragraphs 17 through 20, above, using mechanized, earthmoving equipment.
20. Brady Brook flows to the East Branch of the Croton River which flows to the Croton River which flows to the tidal waters of the Hudson River.

III. TERMS OF SETTLEMENT

21. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, their officers, members, employees, successors and assigns, including, but not limited to, subsequent purchasers.
22. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in this CA/FO and that Complainants’ allegations state a claim upon which relief can be granted against Respondents.
23. Respondents waive any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in this CA/FO, consent to the terms of this Consent Agreement and Final Order.
24. Respondents hereby waive their right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

25. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Fifty Thousand (\$50,000.00) DOLLARS.
26. For purposes of settlement, Respondents consent to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

IV. PAYMENT OF PENALTY

27. No later than forty-five (45) days after the date signature on the Final Order by the Regional Administrator of Region 2 of the EPA (at the end of this document), Respondents shall pay the penalty of FIFTY THOUSAND (\$50,000.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Respondents shall perform payment pursuant to the following:

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045

Field Tag 4200 of the Fedwire message should read " D 68010727 Environmental Protection Agency "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

Respondents shall also send copies of this payment to each of the following:

David Pohle
Wetlands Enforcement Coordinator
Wetlands Protection Team
Watershed Management Branch
U.S. Environmental Protection Agency Region 2
290 Broadway - 24th Floor
New York, NY 10007-1866
Fax number: (212) 637-3889

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

28. Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the “due date”.
- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
 - b. further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
 - c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
 - d. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

29. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents' federal or state taxes.

V. GENERAL PROVISIONS

30. The Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
31. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
32. This Consent Agreement and Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondents, if any, in connection with the SEP undertaken pursuant to this Agreement.
33. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.
34. Each undersigned representatives of the parties to this Consent Agreement certify that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
35. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

FOR RESPONDENT, COGI LLC.:

BY: _____
Trevor Davis
Member

DATE: _____

FOR RESPONDENT, QUAKER HILLS LLC.:

BY: _____
NAME OF SIGNATORY
TITLE OF SIGNATORY

DATE: _____

FOR COMPLAINANT U.S. EPA, REGION 2:

BY: _____
Walter Mugdan, Director
Division of Environmental Planning
and Protection
U.S. Environmental Protection Agency,
Region 2

DATE: Sept. 29, 2008

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007**

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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail
Return Receipt Requested:

Richard G. Leland, Esq.
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Tel: +1.212.859.8000
Fax: +1.212.859.4000

Original and One Copy
By Internal Mail (pouch):

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: JAN - 8 2009



NAME OF SECRETARY, Secretary

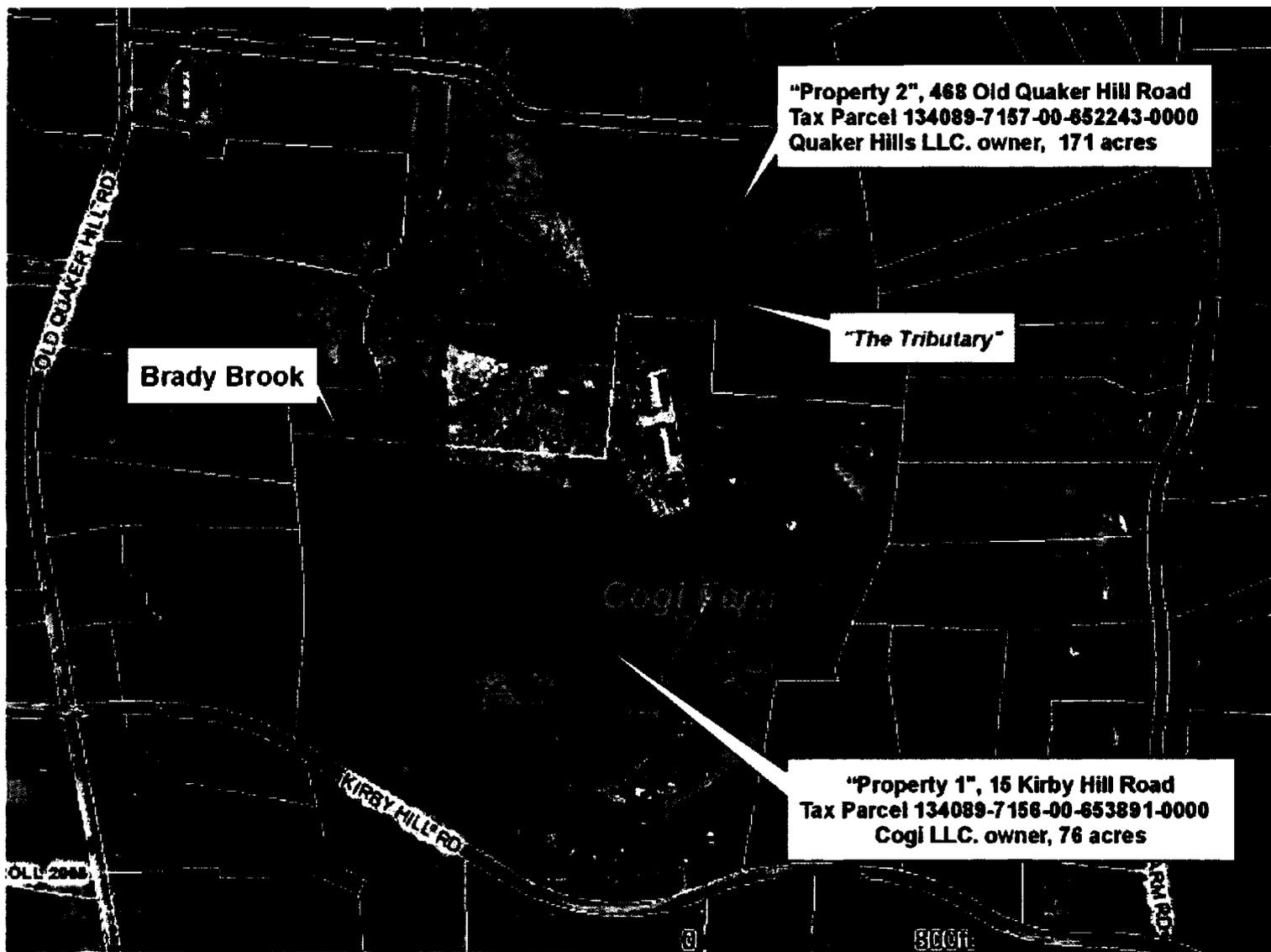
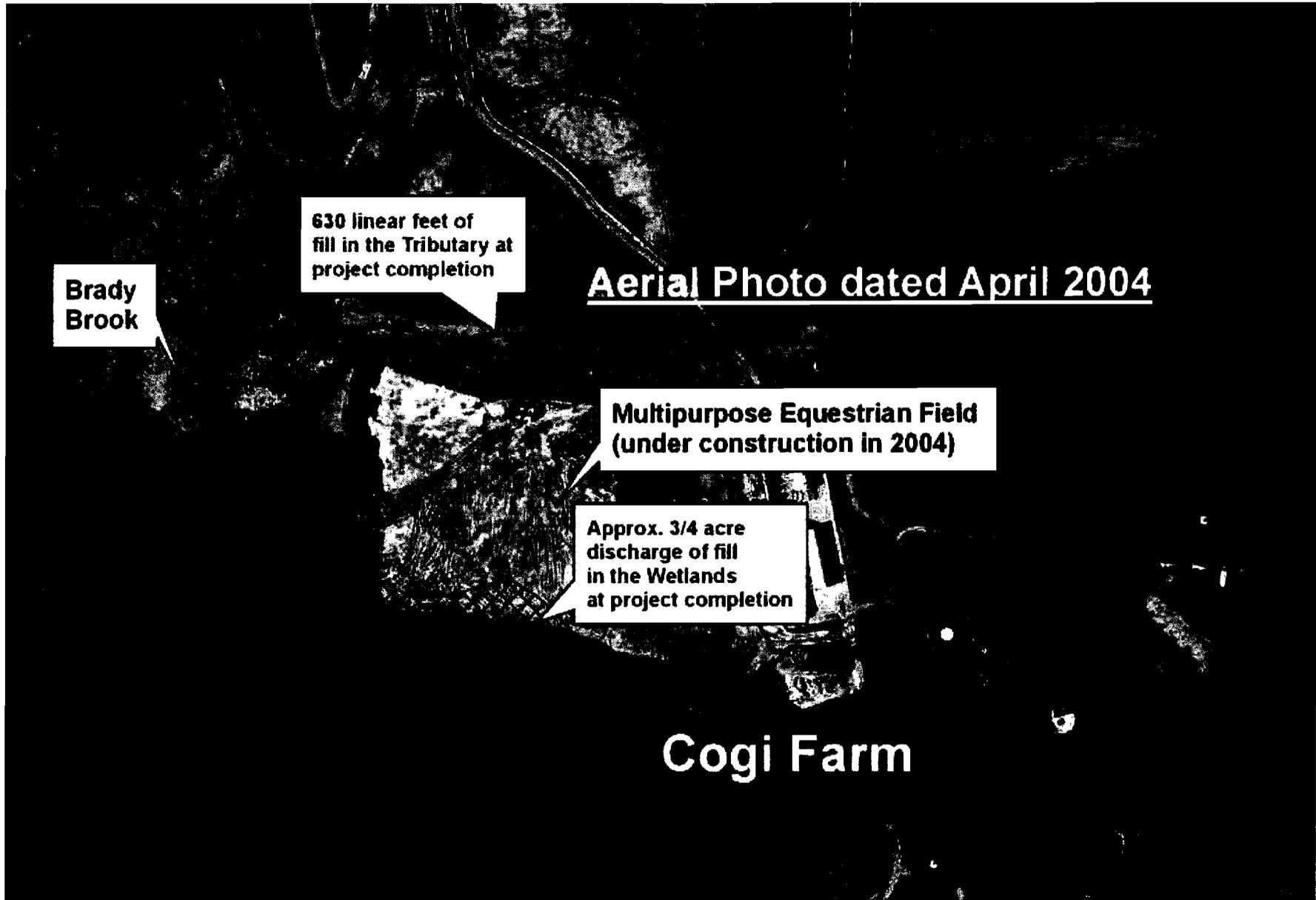


Exhibit A - Order-on-Consent - CWA-02-2008-3504

Location of "Property 1" and "Property 2", Cogi Farm, "Brady Brook", "The Wetlands", and "The Tributary" depicted on tax map downloaded from the "Parcel Access" on-line, tax map viewer of the Dutchess County, NY, government website (<http://geoaccess.co.dutchess.ny.us/parcelaccess>).



Aerial Photo dated April 2004

**Brady
Brook**

**630 linear feet of
fill in the Tributary at
project completion**

**Multipurpose Equestrian Field
(under construction in 2004)**

**Approx. 3/4 acre
discharge of fill
in the Wetlands
at project completion**

Cogi Farm

Exhibit B - Order-on-Consent - CWA-02-2008-3504

Location of discharges of earthen fill material into the Wetlands and the Tributary.