

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION**

In the matter of:

ACO-000219  
Date Entered: 4.29.14

Manchester Mortgage Company, LLC  
40680 Garfield Road, Suite 1A  
Clinton Township, Michigan 48038-4016

Liberty Shores I, LLC  
40680 Garfield Road, Suite 1A  
Clinton Township, Michigan 48038-4016

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**ADMINISTRATIVE CONSENT ORDER**

This document results from allegations by the Department of Environmental Quality (DEQ), Water Resources Division (WRD). The DEQ alleges Manchester Mortgage Company, LLC (Manchester Mortgage), located at 40680 Garfield Road, Suite 1A, Clinton Township, Macomb County, Michigan, is in violation of Part 31, Water Resources Protection, MCL 324.3101 *et seq.*; and Part 91, Soil Erosion and Sedimentation Control (SESC), MCL 324.9101 *et seq.*, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the promulgated rules, specifically 2006 AACS R 323.2190 (Permit-By-Rule). These violations occurred as a result of earth change activities associated with the undeveloped portion of the residential development owned by Manchester Mortgage that is identified as the Liberty Shores Site Condominium (Liberty Shores) located in Fenton Township, Genesee County. Originally, Liberty Shores consisted of two parent parcels that were owned by October Capital Group, LLC (October Capital). Subsequently, Liberty Shores was subdivided into multiple condominium units. Currently, there are three phases of development (developed, partially-developed, and undeveloped) at Liberty Shores.

On November 16, 2012, Manchester Mortgage became the fee owner of a 74-acre parcel (Tax Parcel No. 06-21-400-013) identified in this document as Phase III. Phase III is located in the undeveloped portion of Liberty Shores, where some of the above-mentioned violations are occurring.

On August 28, 2013, Liberty Shores I, LLC, recorded the master deed for Liberty Shores East as the developer pursuant to the Michigan Condominium Act, 1978 PA 59, MCL 559.101 *et seq.* The Liberty Shores East master deed applies to Phase III, former Tax Parcel No. 06-21-400-013, and created 20 condominium units, which are now designated as Tax Parcel Nos. 06-21-676-001 to 06-21-676-020, as depicted in Exhibit A.

This Administrative Consent Order (Consent Order) also results from the transfer of ownership of certain real property in Liberty Shores from October Capital to Manchester Mortgage that is also subject to escalated enforcement actions by the DEQ against October Capital for violations of Part 31, Part 91, Part 301, Inland Lakes and Streams, MCL 324.30101 *et seq.*, and Part 303, Wetlands Protection, of the NREPA, MCL 324.30301 *et seq.* This Consent Order does not resolve October Capital's liability for any violations of Parts 31, 91, 301, or 303, that the DEQ has alleged in Genesee County Circuit Court Case No. 13-101127-CE.

In the interest of ensuring future compliance with Parts 31, 91, 301 and 303, the DEQ, Manchester Mortgage, and Liberty Shores I, LLC agree to the entry of this Consent Order requiring specified compliance requirements, as set forth below. Manchester Mortgage and Liberty Shores I, LLC each are a person, as defined by Section 301 of the NREPA, and are registered with the Michigan Department of Licensing and Regulatory Affairs as able to conduct business in the State of Michigan under Identification Nos. D5128Y and D7341V, respectively. Manchester Mortgage and Liberty Shores I, LLC (collectively, the Companies) and the DEQ agree to resolve the violations set forth herein through entry of this Consent Order.

### **I. STIPULATIONS**

The Companies and the DEQ stipulate as follows:

- 1.1 The NREPA, MCL 324.101 *et seq.*, is an act that controls pollution to protect the environment and natural resources in the state.
- 1.2 Part 31 and the rules promulgated pursuant thereto provide for the protection,

conservation, and the control of pollution of the water resources of the state.

- 1.3 The DEQ is authorized by Section 3112(4) of Part 31, MCL 324.3112(4), to enter orders requiring persons to abate pollution, and the director of the DEQ may delegate this authority to a designee under Section 301(b) of the NREPA, MCL 324.301(b).
- 1.4 Part 91 and the rules promulgated pursuant thereto provide for the control of soil erosion and sedimentation.
- 1.5 Part 301 and the rules promulgated pursuant thereto provide for the protection of inland lakes and streams.
- 1.6 Part 303 and the rules promulgated pursuant thereto provide for the protection and conservation of wetlands.
- 1.7 The Companies consent to the issuance and entry of this Consent Order and stipulate that the entry of this Consent Order constitutes a final order of the DEQ and is enforceable as such under Section 3112(4) of Part 31. The Companies agree not to contest the issuance of this Consent Order and that the resolution of this matter by the entry of this Consent Order is appropriate and acceptable. It is also agreed that this Consent Order shall become effective on the date it is signed by the chief of the WRD, delegate of the director, pursuant to Section 301(b) of the NREPA.
- 1.8 The Companies and the DEQ agree that the signing of this Consent Order is for settlement purposes only and does not constitute an admission by the Companies that the law has been violated.
- 1.9 The signatories to this Consent Order on behalf of the Companies agree and attest that they are fully authorized to assure that the Companies will comply with all requirements under this Consent Order.
- 1.10 The Companies shall achieve compliance with the aforementioned regulations in

accordance with the requirements contained in Section III, Compliance Program, of this Consent Order.

## II. FINDINGS

- 2.1 On August 25, 2005, DEQ issued Permit No. 05-25-0023-P to October Capital under Part 303, which, among other things, authorized October Capital to place fill in 0.45 acres of wetland for a road crossing, the installation of utility lines in wetland, the construction of a boardwalk across a wetland, and the construction of seven ponds on the Property. Permit No. 05-25-0023-P required October Capital to mitigate the wetland impacts authorized under the permit by construction of 1.21 acres of new wetland, submit annual monitoring reports to the DEQ for a minimum of five years documenting the performance of the wetland mitigation areas and to provide to the DEQ a financial assurance in the amount of \$100,000 to ensure completion of construction and monitoring of the wetland mitigation areas. Permit No. 05-25-0023-P had an original expiration date of December 31, 2006. October Capital sought and was granted two successive one-year extensions of Permit No. 05-25-0023-P until December 31, 2008, at which time the permit expired because October Capital was unable to provide the financial assurance required to keep the permit in effect.
  
- 2.2 On September 25, 2008, DEQ issued Violation Notice No. VN-003674 (Violation Notice) to October Capital citing violations of Part 31, Part 301, and Part 303, that the DEQ observed at Liberty Shores during an inspection performed on September 12, 2008. The violations included: (i) failure to install and properly maintain SESC measures; (ii) unpermitted discharges to waters of the state (including, but not limited to wetlands and Tupper Lake); and (iii) unpermitted filling of and damage to wetlands. The Violation Notice also specified the actions October Capital must take to restore and protect the wetlands and waters of the state impacted by the unpermitted discharges identified by the DEQ. October Capital failed to bring the site into compliance under the NREPA, including meeting its obligations under Permit No. 05-25-0023-P. Subsequently, the DEQ had sent eight additional notification letters to October Capital regarding the unresolved

Part 303 violations, including issuing an order to restore impacted wetlands pursuant to Part 303 on August 11, 2011.

- 2.3 On November 16, 2012, Manchester Mortgage became fee owner of Phase III within Liberty Shores, as identified in Exhibit A.
- 2.4 On June 6, 2013, the DEQ received an incomplete Notice of Coverage application required under Permit-By-Rule for the earth change activities associated with Parcel 06-21-400-013. A Notice of Coverage is required under Part 31 prior to the commencement of earth change activity that is five acres or greater in size. Therefore, the DEQ notified Manchester Mortgage in a letter, dated July 1, 2013, that it was not authorized to discharge storm water under Part 31 from Liberty Shores.
- 2.5 On July 11, 2013, the Genesee County Drain Commissioner's Office issued a Final Notice of Determination to Manchester Mortgage for the violations of Part 91 occurring on Parcel No. 06-21-400-013, which included failure to install and correctly maintain SESC measures on the site.
- 2.6 On July 18, 2013, the DEQ conducted a site inspection at Liberty Shores and determined that Manchester Mortgage was in violation of Part 31 and Part 91. The DEQ notified Manchester Mortgage of the violations in DEQ's letter dated October 28, 2013 (Exhibit B).
- 2.7 On December 5, 2013, the Part 91 permit expired for Phase 2A of Liberty Shores in violation of Part 91. On February 28, 2014, Manchester Mortgage was reissued a Part 91 permit by the Genesee County.

### **III. COMPLIANCE PROGRAM**

IT IS THEREFORE AGREED AND ORDERED THAT the Companies shall take the following actions to comply with and prevent further violations of Part 31, Part 91, and Part 303:

- 3.1 The Companies shall comply with all Part 91 permits that are currently in force as of the Effective Date of this Consent Order. The Companies shall comply with all Part 31, Permit-By-Rule, Part 91, and Part 303 requirements, including obtaining and maintaining all required permits and seeking permit modification as required under law.
- 3.2 The Companies shall not conduct any activity within wetlands regulated under Part 303 except as provided by this Consent Order or as authorized by separate permit issued to the Companies by the WRD. This Consent Order does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
- 3.3 Not later than 14 days after the Effective Date of this Consent Order, the Companies shall submit a Notice of Coverage application to the WRD as required under the Permit-by-Rule in the name of the title holder of the affected real property within Liberty Shores.
- 3.4 The Companies shall submit all certified construction storm water operator inspection logs kept pursuant to the Permit-by-Rule for the previous month by the 10th of each month until a Notice of Termination (NOT) is issued certifying the permanent stabilization of the Property.
- 3.5 The Companies shall comply with all requirements of the Part 91 permit and SESC plan, Permit No 13-0097 issued on May 29, 2013, attached as Exhibit C, or any other subsequently revised or issued Part 91 permit and SESC plan.
- 3.6 The Companies shall schedule a final site review with the DEQ to verify the site has been permanently stabilized. Once the DEQ agrees that the site is permanently stabilized, the Companies shall submit a NOT to the DEQ within 10 days after the final site review, as required under the Permit-by-Rule.
- 3.7 Within 30 days after the Effective Date of this Consent Order, the Companies shall submit to the DEQ for review and approval a revised wetland restoration plan (Restoration Plan).

The Restoration Plan shall contain a work schedule that addresses all the actions needed to complete all of the work described in the Restoration Plan in accordance with Part 303. The Restoration Plan shall include details on how the following actions will be conducted:

- a. Restoration of 0.24 acres of impacted wetland area located between the proposed 0.74 acre of constructed wetland area and the existing berm identified in Exhibit D
- b. Completion of the wetland restoration of lots 72, 73, and 86 (now 105) located in Phase II of Liberty Shores as previously identified in the Liberty Shores Wetland Proposal prepared by Atwell, dated March 19, 2012, and last revised on June 7, 2013.
- c. Restoration of 0.18 acres of wetland impacted by the road crossing in Phase III (See Exhibit D) if the Part 303 permit referenced in paragraph 3.13 of this Consent Order is not sought or issued by the DEQ to complete construction of the road crossing.
- d. Restoration of the 0.05 acres of wetland impacted by the existing berm identified in Exhibit D if the 0.74 acres of new wetland to be constructed as mitigation for the road crossing in Phase III if the Part 303 permit referenced in paragraph 3.13 of this Consent Order is not sought or issued by the DEQ to complete construction of the road crossing.

Once approved, the revised Restoration Plan shall be incorporated by reference and become enforceable under this Consent Order.

- 3.8 By no later than October 1, 2014, the Companies shall complete construction and planting in accordance with the approved Restoration Plan.
- 3.9 The Companies shall be responsible for monitoring the wetland restoration areas identified in the Restoration Plan for a period of five (5) years following completion of the planting work. An experienced wetland consultant shall conduct the monitoring. A complete assessment of each wetland area's development shall be made annually, and shall be provided to the WRD in annual reports submitted no later than December 31 of

each year. The wetland restoration areas shall be evaluated utilizing the performance standards in Exhibit E. The annual monitoring report shall be prepared utilizing recognized and established scientific procedures in accordance with the requirements in Exhibit F.

3.10 Should the wetland restoration areas fail to become established as a wetland community as designed after three (3) complete growing seasons, or fail to demonstrate satisfactory progress towards a self-sustaining wetland system as designed, the Companies shall:

- A. Assess the problem(s) and identify the probable causes;
- B. Develop reasonable and necessary corrective measures as a revision to the original plan (reasonable and necessary corrective measures may include, but are not limited to, regrading soils to improve hydrology, reseeding, and/replanting of wetland plants);
- C. Submit a plan describing the proposed corrective measures and dates of implementation to the WRD for review and approval (corrective action plan); and
- D. Upon WRD approval, implement the corrective measures as specified in the approved corrective action plan.

3.11 Within 30 days after the Effective Date of this Consent Order, the Companies shall provide to the WRD financial assurance in the amount of \$31,000.00 to ensure the success of the wetland restoration areas. The financial assurance shall be in a form identical to the financial assurance models on the WRD's Web site at [www.michigan.gov/wetlands](http://www.michigan.gov/wetlands). If the Part 303 permit for the road crossing in Phase III referenced in paragraph 3.13 of this Consent Order is issued by the DEQ, the WRD shall release \$11,500.00 of the financial instrument related to the restoration activities required under paragraphs 3.7a and 3.7b of this Consent Order.

3.12 Upon request of the Companies and with the submittal of adequate proofs, the WRD shall release portions of the financial instrument in accordance with the following guidelines:

- a. Fifty (50) percent of the financial instrument may be released after the Manchester demonstrates substantial compliance with Performance Standards as specified in Exhibit E, for a minimum of two years after construction of the restoration wetland areas.
  - b. The remaining 50 percent of the financial instrument will be released upon all of the following:
    - i. Submittal of all the required monitoring reports;
    - ii. Submittal of a map including a surveyed boundary of the established wetland within the restoration areas, including the total acreage of the wetland and the acreage of each type of wetland created. The wetland boundary shall be flagged and numbered in the field to allow easy identification by DEQ field staff.
    - iii. Substantial compliance with all of the Performance Standards as outlined in Exhibit E.
    - iv. Final approval by the WRD.
- 3.13 No later than May 15, 2014, the Companies shall submit a Part 303 permit application to DEQ proposing only the impacts to regulated wetlands for the Phase III road crossing and the related construction of 0.74 acres of mitigation wetland that were previously authorized under expired Permit No. 05-25-0023-P. The Companies shall not submit a Part 303 permit application for the Phase III road crossing until the Restoration Plan has been approved by the DEQ and financial assurance has been provided to the DEQ as required under paragraph 3.11. The issued Part 303 permit shall be incorporated by reference and become enforceable under this Consent Order and the Companies shall complete the Phase III road crossing and 0.74 acre mitigation wetland construction and monitoring in compliance with the issued permit and this Consent Order.
- 3.14 Any decision by the Companies to not construct the road crossing in Phase III shall not release the Companies from the obligations to complete wetland restoration and monitoring in accordance with the this Consent Order.

- 3.15 The Companies shall submit all reports, work plans, specifications, schedules, or any other writing required by this section to the Lansing District Supervisor, WRD, DEQ, P.O. Box 30242, Lansing, Michigan 48909-7742. The cover letter with each submittal shall identify the specific paragraph and requirement of this Consent Order that the submittal is intended to satisfy.

#### **IV. DEQ APPROVAL OF SUBMITTALS**

- 4.1 For any work plan, proposal, or other document, excluding applications for permits or licenses, that are required by this Consent Order to be submitted to the DEQ by the Companies, the following process and terms of approval shall apply.
- 4.2 All work plans, proposals, and other documents required to be submitted by this Consent Order shall include all of the information required by the applicable statute and/or rule, and all of the information required by the applicable paragraph(s) of this Consent Order.
- 4.3 In the event the DEQ disapproves a work plan, proposal, or other document, it will notify the Companies, in writing, specifying the reasons for such disapproval. The Companies shall submit, within 30 days after receipt of such disapproval, a revised work plan, proposal, or other document which adequately addresses the reasons for the DEQ's disapproval. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Companies of this disapproval within 30 days.
- 4.4 In the event the DEQ approves with specific modifications, a work plan, proposal, or other document, it will notify the Companies, in writing, specifying the modifications required to be made to such work plan, proposal, or other document prior to its implementation and the specific reasons for such modifications. The DEQ may require the Companies to submit, prior to implementation and within 30 days after receipt of such approval with specific modifications, a revised work plan, proposal, or other document which adequately addresses such modifications. If the revised work plan, proposal, or other document is still not acceptable to the DEQ, the DEQ will notify the Companies of this disapproval.

- 4.5 Upon DEQ approval, or approval with modifications, of a work plan, proposal, or other document, such work plan, proposal, or other document shall be incorporated by reference into this Consent Order and shall be enforceable in accordance with the provisions of this Consent Order.
- 4.6 Failure by the Companies to submit an approvable work plan, proposal, or other document, within the applicable time periods specified above, constitutes a violation of this Consent Order and shall subject the Companies to the enforcement provisions of this Consent Order, including the stipulated penalty provisions specified in paragraph 9.3.
- 4.7 Any delays caused by the Companies' failure to submit an approvable work plan, proposal, or other document when due shall in no way affect or alter the Companies' responsibility to comply with any other deadline(s) specified in this Consent Order.
- 4.8 No informal advice, guidance, suggestions, or comments by the DEQ regarding reports, work plans, plans, specifications, schedules or any other writing submitted by the Companies will be construed as relieving the Companies of their obligation to obtain written approval, if and when required by this Consent Order.

#### **V. EXTENSIONS**

- 5.1 The Companies and the DEQ agree that the DEQ may grant the Companies a reasonable extension of the specified deadlines set forth in this Consent Order. Any extension shall be preceded by a written request in duplicate to the DEQ, WRD, Enforcement Unit Chief, Constitution Hall, 525 West Allegan Street, Lansing, Michigan 48909-7773, and the Lansing District Supervisor at the address in paragraph 3.15, no later than ten business days prior to the pertinent deadline, and shall include:
- a. Identification of the specific deadline(s) of this Consent Order that will not be met.
  - b. A detailed description of the circumstances that will prevent the Companies from meeting the deadline(s).

- c. A description of the measures the Companies have taken and/or intend to take to meet the required deadline.
- d. The length of the extension requested and the specific date on which the obligation will be met.

The Lansing District Supervisor, in consultation with the Enforcement Unit Chief, shall respond in writing to such requests. No change or modification to this Consent Order shall be valid unless in writing from the DEQ, and if applicable, signed by both parties.

#### **VI. REPORTING**

- 6.1 The Companies shall verbally report any violation(s) of the terms and conditions of this Consent Order to the Lansing District Supervisor by no later than the close of the next business day following detection of such violation(s) and shall follow such notification with a written report within five business days following detection of such violation(s). The written report shall include a detailed description of the violation(s), as well as a description of any actions proposed or taken to correct the violation(s). The Companies shall report any anticipated violation(s) of this Consent Order to the above-referenced individual in advance of the relevant deadlines whenever possible.

#### **VII. RETENTION OF RECORDS**

- 7.1 Upon request by an authorized representative of the DEQ, the Companies shall make available to the DEQ all records, plans, logs, and other documents required to be maintained under this Consent Order or pursuant to Part 31 or its rules. All such documents shall be retained by the Companies for at least a period of three years from the date of generation of the record unless a longer period of record retention is required by Part 31 or its rules.

### VIII. RIGHT OF ENTRY

- 8.1 The Companies shall allow any authorized representative or contractor of the DEQ, upon presentation of proper credentials, to enter upon the premises of the facility at all reasonable times for the purpose of monitoring compliance with the provisions of this Consent Order. This paragraph in no way limits the authority of the DEQ to conduct tests and inspections pursuant to the NREPA and the rules promulgated thereunder, or any other applicable statutory provision.

### IX. PENALTIES

- 9.1 The Companies agree to pay to the State of Michigan **\$3,200 DOLLARS** as partial compensation for the cost of investigations and enforcement activities arising from the violations specified in Section II of this Consent Order. Payment shall be made within 30 days after the Effective Date of this Consent Order in accordance with paragraph 9.7.
- 9.2 The Companies agree to pay a civil fine of **\$11,800 DOLLARS** for the violations specified in Section II of this Consent Order. Payment shall be made within 30 days after the Effective Date of this Consent Order in accordance with paragraph 9.7.
- 9.3 For each failure to comply with a provision of Section III or IV of this Consent Order, the Companies shall pay stipulated penalties of **\$200** per violation per day for 1 to 7 days of violation, **\$300** per violation per day for 8 to 14 days of violation, and **\$500** per violation per day for each day of violation thereafter. Upon receipt of a notice of violation governed by the specific requirements under paragraph 3.4 of this Consent Order, the Companies shall have five (5) days to cure the violation before the imposition of any penalty begins under this paragraph.
- 9.4 For each failure to comply with a provision of Section VI, VII, or VIII of this Consent Order, or any other requirement of this Consent Order, the Companies shall pay stipulated penalties of **\$200** per violation per day for each day of violation.

- 9.5 To ensure timely payment of the above civil fine, costs, and stipulated penalties, the Companies shall pay an interest penalty to the General Fund of the State of Michigan each time it fails to make a complete or timely payment. This interest penalty shall be based on the rate set forth at MCL 600.6013(8), using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally made in full.
- 9.6 The Companies agree to pay all funds due pursuant to this agreement by check made payable to the State of Michigan and delivered to the Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, MI 48909-8157; or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 West Ottawa Street, Lansing, MI 48933. To ensure proper credit, all payments made pursuant to this Consent Order must include the **Payment Identification No. WRD40072**.
- 9.7 The Companies agree not to contest the legality of the civil fine or costs paid pursuant to paragraphs 9.1, and 9.2, above. The Companies further agree not to contest the legality of any stipulated penalties or interest penalties assessed pursuant to paragraphs 9.3, 9.4, and 9.5, above, but reserve the right to dispute the factual basis upon which a demand by the DEQ for stipulated penalties or interest penalties is made.

#### **X. FORCE MAJEURE**

- 10.1 The Companies shall perform the requirements of this Consent Order within the time limits established herein, unless performance is prevented or delayed by events that constitute a "Force Majeure." Any delay in the performance attributable to a "Force Majeure" shall not be deemed a violation of the Companies' obligations under this Consent Order in accordance with this section.
- 10.2 For the purpose of this Consent Order, "Force Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of the Companies, such as: an Act of God, untimely review of permit

applications or submissions by the DEQ or other applicable authority, and acts or omissions of third parties that could not have been avoided or overcome by the Companies' diligence and that delay the performance of an obligation under this Consent Order. "Force Majeure" does not include, among other things, unanticipated or increased costs, changed financial circumstances, or failure to obtain a permit or license as a result of the Companies' actions or omissions.

- 10.3 The Companies shall notify the DEQ, by telephone, within 48 hours of discovering any event that causes a delay in its compliance with any provision of this Consent Order. Verbal notice shall be followed by written notice within ten calendar days and shall describe, in detail, the anticipated length of delay, the precise cause or causes of delay, the measures taken by the Companies to prevent or minimize the delay, and the timetable by which those measures shall be implemented. The Companies shall adopt all reasonable measures to avoid or minimize any such delay.
- 10.4 Failure of the Companies to comply with the notice requirements and time provisions under paragraph 10.3 shall render this Section X void and of no force and effect as to the particular incident involved. The DEQ may, at its sole discretion and in appropriate circumstances, waive in writing the notice requirements of paragraph 10.3, above.
- 10.5 If the parties agree that the delay or anticipated delay was beyond the control of the Companies, this may be so stipulated, and the parties to this Consent Order may agree upon an appropriate modification of this Consent Order. However, the DEQ is the final decision maker on whether or not the matter at issue constitutes a force majeure. The parties to this Consent Order understand and agree that the final decision by the DEQ regarding a force majeure claim is not subject to judicial review. The burden of proving that any delay was beyond the reasonable control of the Companies, and that all the requirements of this Section X have been met by the Companies, rests with the Companies.

- 10.6 An extension of one compliance date based upon a particular incident does not necessarily mean that the Companies qualifies for an extension of a subsequent compliance date without providing proof regarding each incremental step or other requirement for which an extension is sought.

## **XI. GENERAL PROVISIONS**

- 11.1 With respect to any violations not specifically addressed and resolved by this Consent Order, the DEQ reserves the right to pursue any other remedies to which it is entitled for any failure on the part of the Companies to comply with the requirements of the NREPA and its rules.
- 11.2 The DEQ and the Companies consent to enforcement of this Consent Order in the same manner and by the same procedures for all final orders entered pursuant to Part 31, MCL 324.3101 *et seq.*; and enforcement pursuant to Part 17, Michigan Environmental Protection Act, of the NREPA, MCL 324.1701 *et seq.*
- 11.3 This Consent Order in no way affects the Companies' responsibility to comply with any other applicable state, federal, or local laws or regulations.
- 11.4 The WRD reserves its right to pursue appropriate action, including injunctive relief to enforce the provisions of this Consent Order, and at its discretion, may also seek stipulated fines or statutory fines for any violation of this Consent Order. However, the WRD is precluded from seeking both a stipulated fine under this Consent Order and a statutory fine for the same violation.
- 11.5 Nothing in this Consent Order is or shall be considered to affect any liability the Companies may have for natural resource damages caused by the Companies' ownership and/or operation of Phase III (Exhibit A). The State of Michigan does not waive any rights to bring an appropriate action to recover such damages to the natural resources.

- 11.6 In the event the Companies sell or transfer Phase III (Exhibit A), they shall advise any purchaser or transferee of the existence of this Consent Order in connection with such sale or transfer. Within 30 calendar days, the Companies shall also notify the WRD's Lansing District Supervisor, in writing, of such sale or transfer, the identity and address of any purchaser or transferee, and confirm the fact that notice of this Consent Order has been given to the purchaser and/or transferee. The purchaser and/or transferee of this Consent Order must agree, in writing, to assume all of the obligations of this Consent Order. A copy of that agreement shall be forwarded to the WRD's Lansing District Supervisor within 30 days after assuming the obligations of this Consent Order.
- 11.7 The provisions of this Consent Order shall apply to and be binding upon the parties to this action, and their successors and assigns.
- 11.8 This Consent Order constitutes a civil settlement and satisfaction as to the resolution of the violations specifically addressed herein; however, it does not resolve any criminal action that may result from these same violations.

## **XII. TERMINATION**

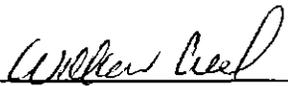
- 12.1 This Consent Order shall remain in full force and effect until terminated by a written Termination Notice (TN) issued by the DEQ. Prior to issuance of a written TN, the Companies shall submit a request consisting of a written certification that the Companies have fully complied with the requirements of this Consent Order and have made payment of any fines, including stipulated penalties, required in this Consent Order. Specifically, this certification shall include:
- a. The date of compliance with each provision of the compliance program in Section III, and the date any fines or penalties were paid.
  - b. A statement that all required information has been reported to the district supervisor.
  - c. Confirmation that all records required to be maintained pursuant to this Consent Order are being maintained by the Companies

The DEQ may also request additional relevant information. The DEQ shall not unreasonably withhold issuance of a TN.

**Signatories**

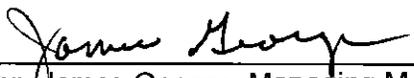
The undersigned CERTIFY they are fully authorized by the party they represent to enter into this Consent Order to comply by consent and to EXECUTE and LEGALLY BIND that party to it.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

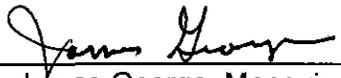
  
\_\_\_\_\_  
William Creal, Chief  
Water Resources Division

4-29-14  
Date

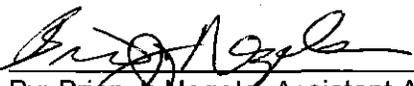
**MANCHESTER MORTGAGE COMPANY, LLC**

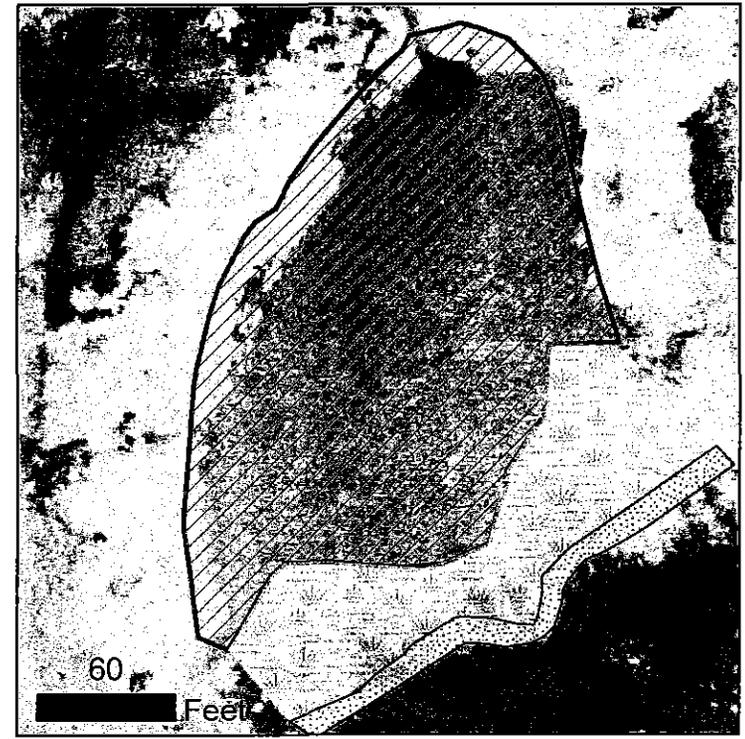
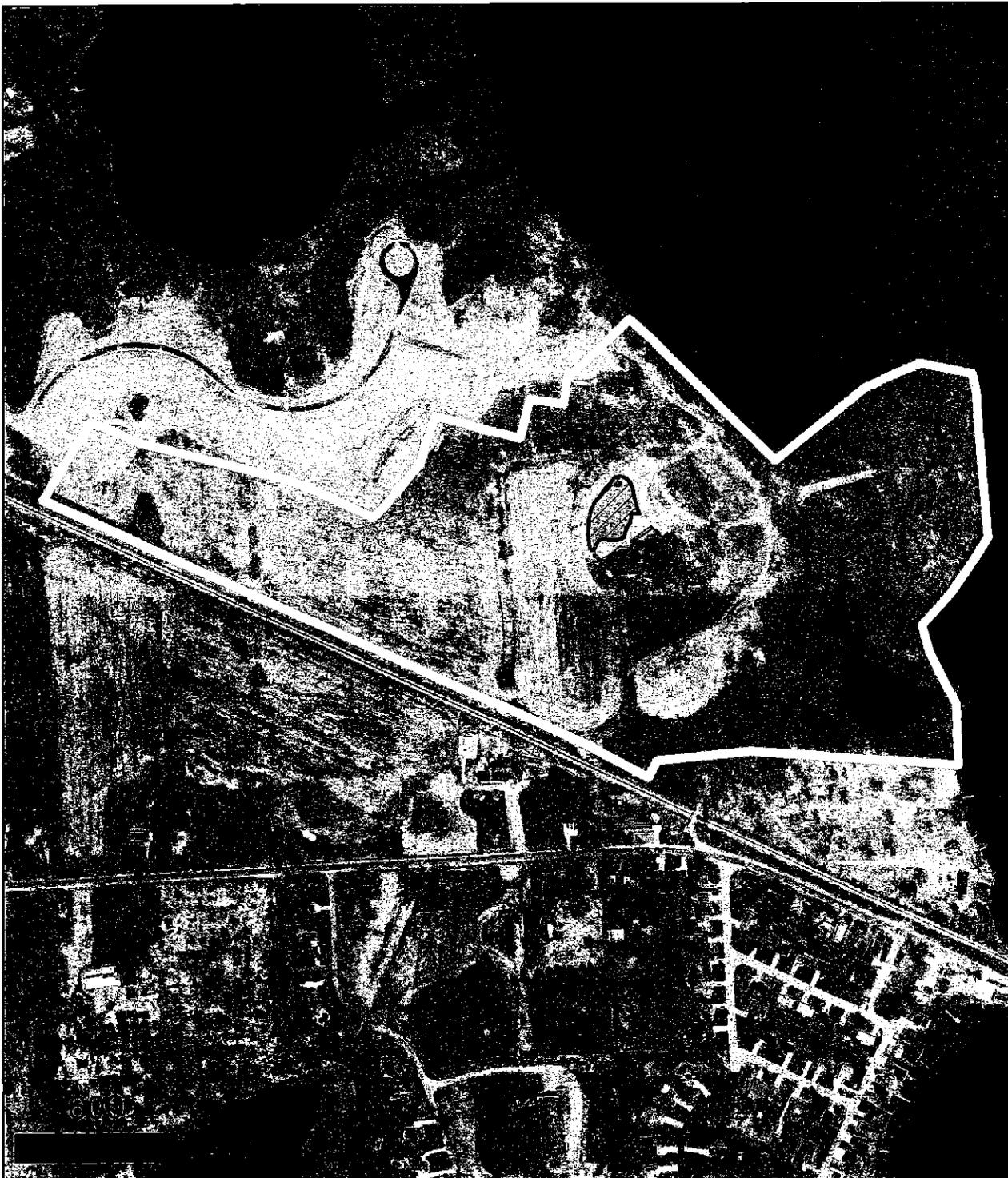
  
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By: James George, Managing Member  
4-19-14  
Date

**LIBERTY SHORES I, LLC**

  
\_\_\_\_\_  
By: James George, Managing Member  
4-19-14  
Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
By: Brian J. Negele, Assistant Attorney General  
For: S. Peter Manning, Chief  
Environment, Natural Resources, and Agriculture Division  
Michigan Department of Attorney General  
04-28-2014  
Date



**Wetland Mitigation/Restoration Area**

**Legend**

-  Wetland Mitigation Area B (0.74 acre)  
Wetland Restoration Area (0.24 acre)
-  Existing Berm (0.05 acre)
-  Phase III Property Boundary



Map By: Justin Smith  
April 2, 2014





RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



DAN WYANT  
DIRECTOR

**NOTICE No. EN-000219**

CERTIFIED MAIL 7009 2820 0001 9804 1663

Mr. Jim George  
Manchester Mortgage  
40680 Garfield Road, Suite 1A  
Clinton Township, Michigan 48038

**ENFORCEMENT NOTICE**

Dear Mr. George:

**SUBJECT: Liberty Shores Condominiums (Liberty Shores Phases 2 and 3)  
T5N, R6E, Section 21, Genesee County  
Linden, Michigan 48451**

The Department of Environmental Quality (DEQ), Water Resources Division (WRD), received an incomplete Notice of Coverage (NOC) application under Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and Rule 323.2190 (Permit-By-Rule) from Manchester Mortgage on June 6, 2013. The DEQ responded with a letter, dated July 1, 2013, notifying Manchester Mortgage that its application was incomplete and therefore not valid. Manchester Mortgage was also notified that it would be required to apply for an individual National Pollutant Discharge Elimination System permit because the DEQ determined that unlawful discharges into waters of the state could not be prevented from the site under an NOC. Manchester Mortgage was also notified in the July 1, 2013, letter that it was not authorized under Permit-By-Rule to discharge storm water.

On July 15, 2013, the DEQ received a copy of the Genesee County Enforcing Agency's (County) July 11, 2013, letter to Manchester Mortgage, titled "Final Notice of Determination," for violations of Part 91, Soil Erosion and Sedimentation Control (SESC), of the NREPA, that the County observed during an onsite inspection. Because Manchester Mortgage was not authorized under Part 31 of the NREPA to discharge storm water, the DEQ conducted a site inspection on July 18, 2013. During the site inspection, the DEQ confirmed that violations of Part 31, Part 91, and the Rule 323.2190 (Permit-By-Rule) were occurring.

The County conducted another inspection on September 17, 2013, and notified the DEQ of the violations it observed. The County observed that the SESC measures on site were inadequate and sediment-laden water was discharging into the wetlands. The lack of SESC measures and the discharge of sediment-laden water into the wetlands observed by the County are violations of Part 31 and Part 91 of the NREPA.

Mr. Jim George  
NOTICE No. EN-000219  
Page 2

Manchester Mortgage is hereby notified it is in violation of Part 31, Water Resources Protection; and Part 91, Soil Erosion and Sedimentation Control, of the NREPA.

YOU ARE FURTHER ADVISED THAT the DEQ, WRD has identified that Manchester Mortgage is responsible for the following violations:

- Conducting an earth change without first obtaining an NOC as required under Permit-By-Rule pursuant to Part 31 of the NREPA.
- Failing to have the site under the supervision of a certified storm water operator and failed to conduct and document site inspections as required under Permit-By-Rule pursuant to Part 31 of the NREPA.
- Violating Part 91 by exceeding the limits of earth disturbance that was permitted by Genesee County.
- Violating Parts 31 and 91 of the NREPA for failure to install and/or maintain adequate SESC measures.
- Violating Parts 31 and 91 of the NREPA by discharging sediment-laden water into waters of the state.

Additionally, on October 10, 2013, the DEQ was copied on an email sent by the County to Mr. Stephen Munkres, the authorized agent representing Manchester Mortgage, for Liberty Shores Phase 2. The County detailed the actions that were still needed to be taken on Liberty Shores Phase 2 before the permit expires on December 5, 2013. If the site is not permanently stabilized before the permit expiration date, then Manchester Mortgage must renew its SESC permit. Please be advised that if Manchester Mortgage fails to take the necessary SESC actions to bring the site into compliance and maintain the appropriate SESC permit as directed by the County then it will accrue additional violations of Part 91 of the NREPA and shall be subject to additional civil fines under the statute.

Due to the litigation associated with the continuing violations on this site and the new violations by Manchester Mortgage, this matter will be addressed by the DEQ's WRD Water Enforcement Unit. The violations identified herein, as well as any additional violations discovered hereafter must be formally resolved through entry of a legally enforceable document.

Manchester Mortgage is requested to immediately undertake all actions necessary to resolve all violations identified in this Enforcement Notice under Parts 31 and 91 of the NREPA.

The DEQ reserves its right to take all necessary and appropriate enforcement actions for all violations of Part 31 and Part 91 of the NREPA that have occurred to date and any violations of Part 31 and Part 91 of the NREPA that may occur in the future. These actions may include, but are not limited to, seeking civil fines, injunctive relief,

Mr. Jim George  
NOTICE No. EN-000219  
Page 3

natural resources damages, all costs associated with this enforcement action, including attorney costs and any other relief available to the DEQ.

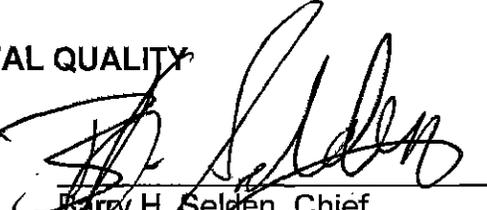
Continuing failure to comply with the terms of Part 31 and Part 91 of the NREPA or other requirements set forth in this NOTICE may result in additional fines, penalties or other actions.

Prior to sending out this Enforcement Notice, the DEQ verbally offered to meet with Manchester Mortgage and its representatives to discuss the violations and their potential resolution. As you agreed by Mr. Daniel R. Boynton, your attorney, the meeting has been scheduled on October 31, 2013, at 2:00 p.m. here at Constitutional Hall in Lansing. If Manchester Mortgage fails to attend the meeting on this specified date, its right to request a meeting is waived.

**STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION**

Date Issued:

*28 Oct 2013*



Barry H. Selden, Chief  
Water Enforcement Unit  
Water Resources Division

**ADDRESS FOR FURTHER CORRESPONDENCE:**

Karen Rae Boase, Enforcement Specialist  
Water Enforcement Unit  
Water Resources Division  
P.O. Box 30458  
Lansing, Michigan 48909-7958

cc: Mr. Dan Boynton, Driggers, Schultz & Herbst  
Mr. Brian Negele, Department of Attorney General  
Mr. Peter Ostlund, DEQ  
Ms. Mary Vanderlaan, DEQ  
Ms. Cheryl Bartley, DEQ  
Ms. Karen Rae Boase, DEQ  
Ms. Susan Doty, DEQ



## GENESEE COUNTY DRAIN COMMISSIONER'S OFFICE

- DIVISION OF -

## WATER &amp; WASTE SERVICES

G-4610 BEECHER ROAD - FLINT, MICHIGAN 48532-2617

PHONE (810) 732-7870 - FAX (810) 732-9773

JEFFREY WRIGHT  
COMMISSIONER**Soil Erosion / Sedimentation Control Permit**

(Part 91, Act 451, P.A. of 1994)

Permit Number: **13-0097**    User ID: DB    Res/Comm: C    S-Permit #:    Log #: L12-214

Date Issued: 05/29/2013    Expires: 05/29/2014    Expected Completion Date: 08/16/2013

Project Name: Liberty Shores Phase III

## Project Description:

Development of subdivision lots, land balancing, utilities, and landscaping

PROJECT LOCATION    Municipality: Fenton Township

Tax ID: 06-21-400-013

Subdivision:

Lot #:

Section: 21

Proximity to Water: 250' to lake ponemah

## LAND OWNER / PERMITTEE

Name: Manchester Mortgage

Address: 40680 Garfield Rd, Suite 1A

City: Clinton Township

State: MI

Zip: 48038

Phone: (586) 243-7995

Email:

## ON-SITE RESPONSIBLE PERSON

Company Contact: Steve Munkers

Company Name: Liberty Shores 1

Address: 4482 Ford Ave

City: Linden

State: MI

Zip: 48451

Phone: (586) 940-0092

Email:

## GENERAL SOIL EROSION/SEDIMENTATION PERMIT CONDITIONS

**Minimum Rules To Be Applied:**

1. Excavation is to be limited to the construction site.
2. All wetlands, lakes, streams or county drains are to be protected from soil erosion.
3. Storm sewer inlets and all catch basins on site are to be covered with filter fabric.
4. The back of all curbs ditches will have silt fence, trenched 6", to keep sediment on site.
5. Only one construction entrance to the site, consisting of crushed stone shall be used to reduce vehicle tracking of sediment onto streets.
6. All streets will be cleaned of sediment on a regular basis.
7. All soil erosion measures shall be in place prior to excavation and maintained until the site is permanently stabilized.
8. Permittee shall notify the permitting agency within one week after completing the permitted activity or one week prior to the permit expiration date, whichever comes first.

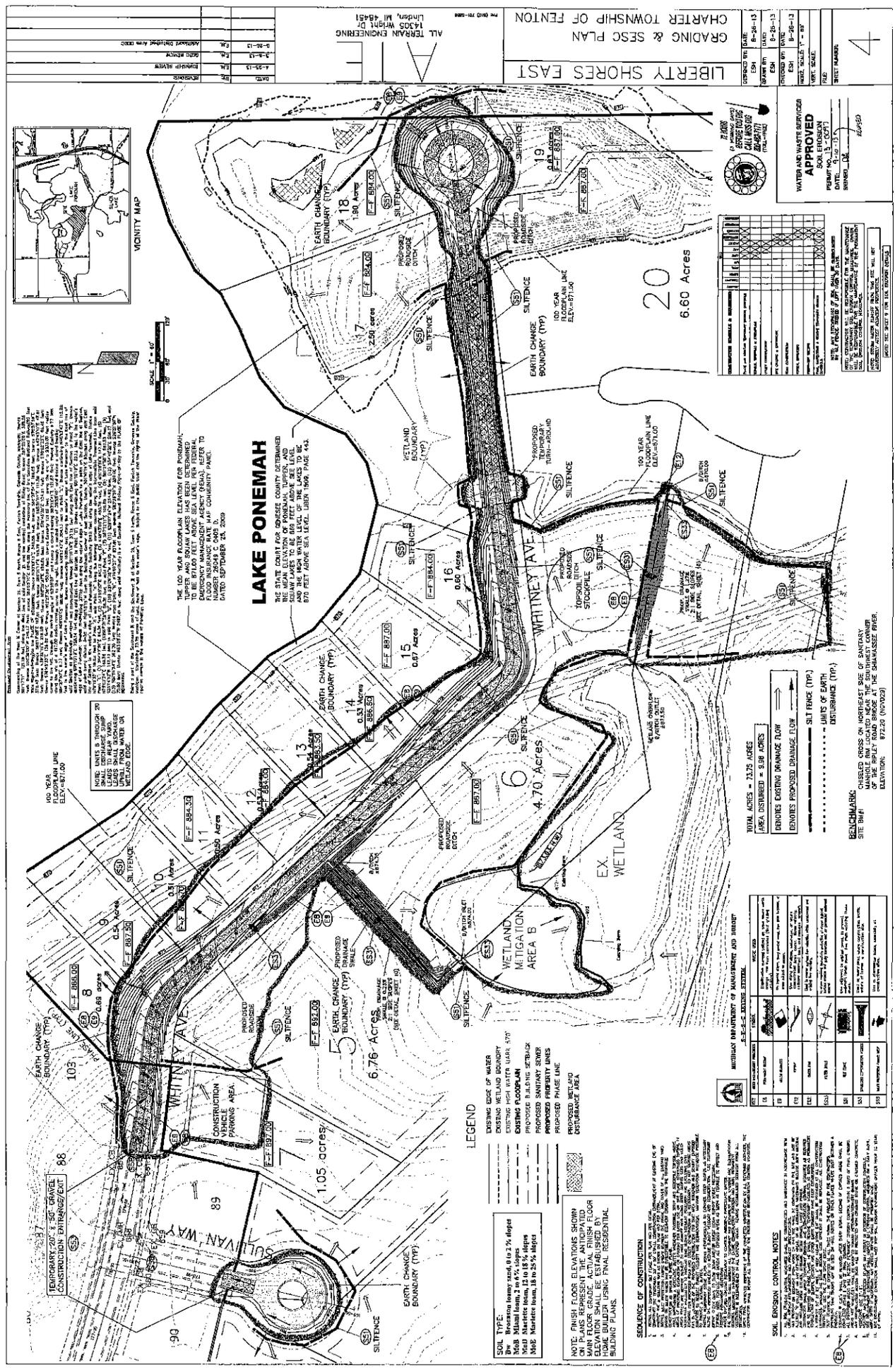
Fee: \$ 600.00

Acreage: 9.98

Bond Amount:

\$30,000.00    Bond Number: 61694192

ALL SOIL EROSION CONTROL MEASURES MUST BE IN PLACE BEFORE THE START OF EXCAVATING.



**LAKE PONEMAH**  
 THE STATE COUNTY FOR SOURCE COUNTY DETERMINED THE 100 YEAR FLOODPLAIN ELEVATION FOR PONEMAH. LOT 18 AND 19 LAKES HAS BEEN DETERMINED TO BE A WETLAND. THE STATE COUNTY DETERMINED THE 100 YEAR FLOODPLAIN ELEVATION FOR PONEMAH. LOT 18 AND 19 LAKES HAS BEEN DETERMINED TO BE A WETLAND. THE STATE COUNTY DETERMINED THE 100 YEAR FLOODPLAIN ELEVATION FOR PONEMAH. LOT 18 AND 19 LAKES HAS BEEN DETERMINED TO BE A WETLAND.

**LEGEND**  
 DRAINAGE DIRECTION OF WATER  
 EXISTING HIGH WATER MARK, 100'  
 EXISTING FLOODPLAIN  
 PROPOSED RAISING SETBACK  
 PROPOSED SANITARY SEWER  
 PROPOSED PROPERTY LINES  
 PROPOSED PHASE LINE  
 PROPOSED WETLAND DISTURBANCE AREA

**SEQUENCE OF CONSTRUCTION**  
 1. CLEAR AND GRUB THE AREA TO BE DEVELOPED.  
 2. INSTALL EROSION CONTROL MEASURES.  
 3. CONSTRUCT SANITARY SEWER AND DRAINAGE SYSTEMS.  
 4. CONSTRUCT FLOODPLAIN ELEVATION CONTROL MEASURES.  
 5. CONSTRUCT WETLAND DISTURBANCE AREA.  
 6. CONSTRUCT BUILDINGS AND OTHER STRUCTURES.  
 7. FINAL GRADING AND EROSION CONTROL MEASURES.

**SOIL EROSION CONTROL NOTES**  
 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE ILLINOIS EROSION CONTROL ACT.  
 2. EROSION CONTROL MEASURES SHALL BE INSTALLED AND MAINTAINED THROUGHOUT CONSTRUCTION.  
 3. SLOPES SHALL BE PROTECTED WITH EROSION CONTROL MEASURES.  
 4. ALL EXPOSED SOIL SHALL BE COVERED WITHIN 14 DAYS OF EXPOSURE.  
 5. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN 180 DAYS OF THE START OF CONSTRUCTION.  
 6. ALL CONSTRUCTION SHALL BE COMPLETED WITHIN 180 DAYS OF THE START OF CONSTRUCTION.

**MANURE APPLICATION OF MANURE AND SLURRY**  
 S.E.-E.-E. EROSION CONTROL

NO.	DESCRIPTION	DATE	APPLICATOR
1	MANURE		
2	SLURRY		
3	MANURE		
4	SLURRY		
5	MANURE		
6	SLURRY		
7	MANURE		
8	SLURRY		
9	MANURE		
10	SLURRY		
11	MANURE		
12	SLURRY		
13	MANURE		
14	SLURRY		
15	MANURE		
16	SLURRY		
17	MANURE		
18	SLURRY		
19	MANURE		
20	SLURRY		

**NOTE: FINISH FLOOR ELEVATIONS SHOWN ON PLANS REPRESENT THE ANTICIPATED FINISH FLOOR ELEVATION. FINISH FLOOR ELEVATION SHALL BE ESTABLISHED BY HOME BUILDER USING FINAL RESIDENTIAL BUILDING PLANS.**

**WATER AND WASTE SERVICES APPROVED SOIL ENGINEER**  
 PERMIT NO. 13-C-051  
 BUREAU, ILL.

NO.	DESCRIPTION	DATE	APPLICATOR
1	WATER		
2	WASTE		
3	WATER		
4	WASTE		
5	WATER		
6	WASTE		
7	WATER		
8	WASTE		
9	WATER		
10	WASTE		
11	WATER		
12	WASTE		
13	WATER		
14	WASTE		
15	WATER		
16	WASTE		
17	WATER		
18	WASTE		
19	WATER		
20	WASTE		

**LIBERTY SHORES EAST**  
 CHARTER & SESC PLAN

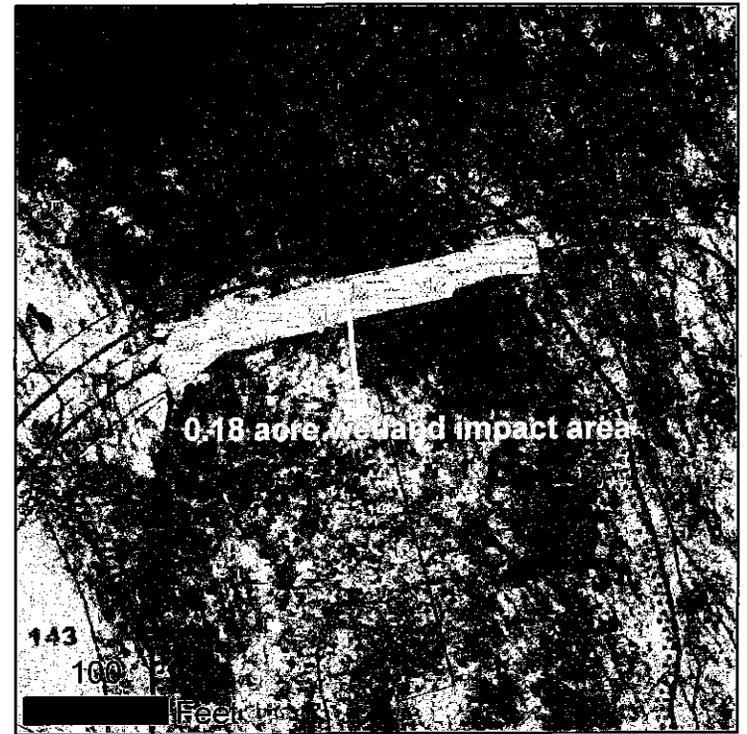
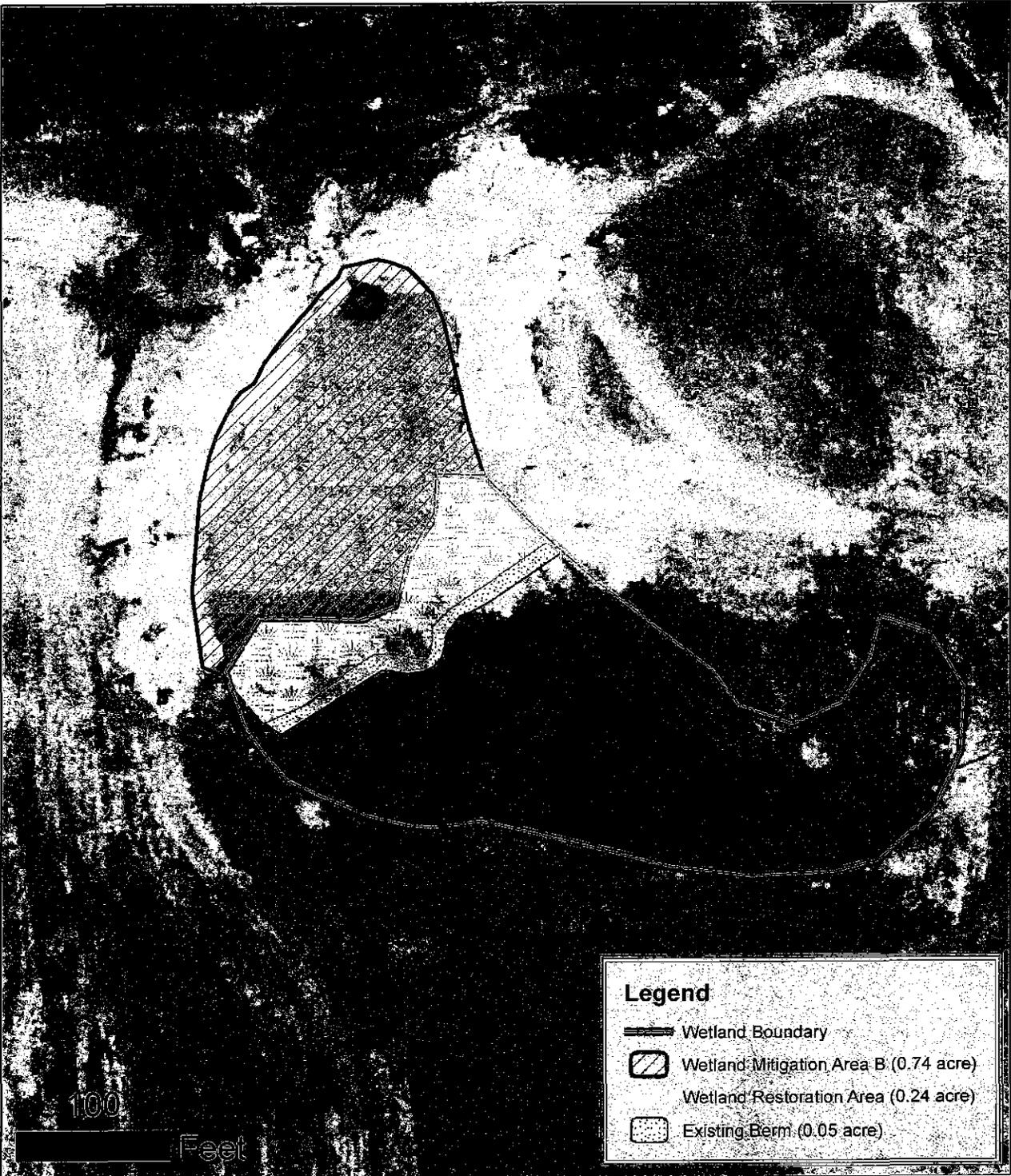
NO.	DESCRIPTION	DATE	APPLICATOR
1	LIBERTY SHORES EAST		
2	CHARTER & SESC PLAN		
3	LIBERTY SHORES EAST		
4	CHARTER & SESC PLAN		
5	LIBERTY SHORES EAST		
6	CHARTER & SESC PLAN		
7	LIBERTY SHORES EAST		
8	CHARTER & SESC PLAN		
9	LIBERTY SHORES EAST		
10	CHARTER & SESC PLAN		
11	LIBERTY SHORES EAST		
12	CHARTER & SESC PLAN		
13	LIBERTY SHORES EAST		
14	CHARTER & SESC PLAN		
15	LIBERTY SHORES EAST		
16	CHARTER & SESC PLAN		
17	LIBERTY SHORES EAST		
18	CHARTER & SESC PLAN		
19	LIBERTY SHORES EAST		
20	CHARTER & SESC PLAN		

**WATER AND WASTE SERVICES APPROVED SOIL ENGINEER**  
 PERMIT NO. 13-C-051  
 BUREAU, ILL.

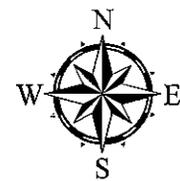
NO.	DESCRIPTION	DATE	APPLICATOR
1	WATER		
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19	WATER		
20	WASTE		

**LIBERTY SHORES EAST**  
 CHARTER & SESC PLAN

**WATER AND WASTE SERVICES APPROVED SOIL ENGINEER**  
 PERMIT NO. 13-C-051  
 BUREAU, ILL.



Partially Constructed Road (Expired Permit No. 05-25-0023-P)



Map By: Justin Smith  
March 25, 2014

## Exhibit E

### Wetland Mitigation Performance Standards

The following performance standards will be used to evaluate the mitigation wetland:

- a. Construction has been completed in accordance with the Department of Environmental Quality's (DEQ) approved plans and specifications included in the permit and mitigation plan.
- b. The mitigation wetland is characterized by the presence of water at a frequency and duration sufficient to support a predominance of wetland vegetation and the wetland types specified at the end of the monitoring period.
- c. A layer of high-quality topsoil, from the A horizon of an organic or loamy surface texture soil, is placed (or exists) over the entire wetland mitigation area at a minimum thickness of six (6) inches.
- d. The mitigation wetland shall be free of oil, grease, debris, and all other contaminants.
- e. A minimum of six (6) wildlife habitat structures, consisting of at least three (3) types, have been placed per acre of mitigation wetland. At least 50 percent of each structure shall extend above the normal water level. The types of acceptable wildlife habitat structures are:
  - i. Tree stumps laid horizontally within the wetland area. Acceptable stumps shall be a minimum of 6 feet long (log and root ball combined) and 12 inches in diameter.
  - ii. Logs laid horizontally within the wetland area. Acceptable logs shall be a minimum of 10 feet long and 6 inches in diameter.
  - iii. Whole trees laid horizontally within the wetland area. Acceptable whole trees shall have all of their fine structure left intact (i.e., not trimmed down to major branches for installation), be a minimum of 20 feet long (tree and root ball), and a minimum of 12 inches in diameter.
  - iv. Snags which include whole trees left standing that are dead or dying, or live trees that will be flooded and die, or whole trees installed upright into the wetland. A variety of tree species should be used for the creation of snag habitat. Acceptable snags shall be a minimum of 20 feet tall (above the ground surface) and a minimum of 12 inches in diameter at breast height. Snags should be grouped together to provide mutual functional support as nesting, feeding, and perching sites.
  - v. Sand mounds at least 18 inches in depth and placed so that they are surrounded by a minimum of 30 feet of water measuring at least 18 inches in depth. The sand mound shall have at least a 200 square foot area that is 18 inches above the projected high water level and oriented to receive maximum sunlight.

## Exhibit E

f. The mean percent cover of native wetland species in the herbaceous layer at the end of the monitoring period is not less than:

- 60 percent for emergent wetland.
- 80 percent for scrub-shrub wetland.
- 80 percent for forested wetland.

Extensive areas of open water and submergent vegetation areas having no emergent and/or rooted floating vegetation shall not exceed 20 percent of the mitigation wetland area. Extensive areas of bare soil shall not exceed five percent of the mitigation wetland area. For the purposes of these performance standards, extensive refers to areas greater than 0.01 acre (436 square feet) in size.

The total percent cover of wetland species in each plot shall be averaged for plots taken in the same wetland type to obtain a mean percent cover value for each wetland type. For the purposes of this standard, total percent cover is the percent cover of the ground surface covered by vegetation, bare soil, and open water, when viewed from above. Total percent cover cannot exceed 100 percent. Plots within identified extensive open water and submergent areas, bare soil areas, and areas without a predominance of wetland vegetation shall not be included in this average. Wetland species refers to species listed as facultative and wetter (FAC, FACW, OBL) on the U.S. Army Corps of Engineer's "National List of Vascular Plant Species That Occur in Wetlands" for Region 3.

g. The mitigation wetland supports a predominance of wetland vegetation (as defined in the *1997 USACE Wetland Manual*) in each vegetative layer, represented by a minimum number of native wetland species, at the end of the monitoring period. The minimum number of native wetland species per wetland type shall not be less than:

- 15 species within the emergent wetland.
- 15 species within the scrub-shrub wetland.
- 15 species within the forested wetland.

The total number of native wetland plant species shall be determined by a sum of all species identified in sample plots of the same wetland type.

h. At the end of the monitoring period, the mitigation wetland supports a minimum of:

- Three hundred (300) individual surviving, established, and free-to-grow trees per acre in the forested wetland that are classified as native wetland species and consisting of at least three different species.
- Three hundred (300) individual surviving, established, and free-to-grow shrubs per acre in the scrub-shrub wetland that are classified as native wetland species and consisting of at least four different species.

## Exhibit E

- Optional: Eight (8) native wetland species of grasses, sedges, or rushes per acre in the wet meadow wetland.

Physiognomic classification of trees and shrubs shall be in accordance with the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001).

- i. The mean percent cover of invasive species including, but not limited to, *Phragmites australis* (Common Reed), *Lythrum salicaria* (Purple Loosestrife), and *Phalaris arundinacea* (Reed Canary Grass) shall in combination be limited to no more than ten (10) percent within each wetland type. Invasive species shall not dominate the vegetation in any extensive area of the mitigation wetland.

If the mean percent cover of invasive species is more than ten (10) percent within any wetland type or if there are extensive areas of the mitigation wetland in which an invasive species is one of the dominant plant species, the permittee shall submit an evaluation of the problem to the DEQ. If the permittee determines that it is infeasible to reduce the cover of invasive species to meet the above performance standard, the permittee must submit an assessment of the problem, a control plan, and the projected percent cover that can be achieved for review by the DEQ. Based on this information, the DEQ may approve an alternative invasive species standard. Any alternative invasive species standard must be approved in writing by the DEQ.

## Exhibit F

### WETLAND RESTORATION REPORT REQUIREMENTS

Manchester Mortgage shall monitor the wetland restoration for a minimum of three years following completion of the planting work. A monitoring report, which compiles and summarizes all data collected during the monitoring period, shall be submitted annually by Manchester Mortgage. Manchester Mortgage shall conduct the following activities and provide the information collected in the monitoring reports:

- a. Measure inundation and saturation at all staff gauges, monitoring wells, and other stationary points shown in the restoration plan monthly during the growing season. Hydrology data shall be measured and provided at sufficient sample points to accurately depict the water regime of each wetland type.
- b. Sample vegetation in plots located along transects shown in the restoration plan once between July 15 and August 31. The number of sample plots necessary within each wetland type shall be determined by use of a species-area curve or other approach approved by the WRD. The minimum number of sample plots for each wetland type shall be no fewer than five (5). Sample plots shall be located on the sample transect at evenly spaced intervals or by another approach acceptable to the WRD. If additional or alternative sample transects are needed to sufficiently evaluate each wetland type, they must be approved in advance in writing by the WRD.

The herbaceous layer (all nonwoody plants and woody plants less than 3.2 feet in height) shall be sampled using a 3.28-foot by 3.28-foot (1 square meter) sample plot. The shrub and tree layer shall be sampled using a 30-foot radius sample plot. The data recorded for each herbaceous layer sample plot shall include a list of all living plant species, and an estimate of percent cover in five percent intervals for each species recorded, bare soil areas, and open water relative to the total area of the plot. The number and species of surviving, established, and free-to-grow trees; and surviving, established, and free-to-grow shrubs shall be recorded for each 30-foot radius plot.

Provide plot data and a list of all the plant species identified in the plots and otherwise observed during monitoring. Data for each plant species must include common name, scientific name, wetland indicator category from the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3, and whether the species is considered native according to the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001). Nomenclature shall follow Voss (1972, 1985, and 1996) or Gleason and Cronquist (1991).

The location of sample transects and plots shall be identified in the monitoring report on a plan view showing the location of wetland types. Sample transects shall be permanently staked at a frequency sufficient to locate the transect in the field.

- c. Delineate any extensive (greater than 0.01 acre in size) open water areas, bare soil areas, areas dominated by invasive species, and areas without a predominance of wetland vegetation, and provide their location on a plan view.
- d. Document any sightings or evidence of wading birds, songbirds, waterfowl, amphibians, reptiles, and other animal use (lodges, nests, tracks, scat, etc.) within the wetland noted during monitoring. Note the number, type, date, and hour of the sightings and evidence.

## Exhibit F

- e. Inspect the site, during all monitoring visits and inspections, for oil, grease, man-made debris, and all other contaminants and report the findings. Rate (e.g., poor, fair, good, or excellent) and describe the water clarity in the mitigation wetland.
- f. Provide annual photographic documentation of the development of the mitigation wetland during vegetation sampling from permanent photo stations located within the mitigation wetland. At a minimum, photo stations shall be located at both ends of each transect. Photos must be labeled with the location, date photographed, and direction.
- g. Provide a written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring results. This summary shall include a calculation of the acres of each wetland type established, a plan view drawing depicting each ecological type, and identification of all performance standards and whether each standard has been met.
- h. Provide a written summary of all the problem areas that have been identified and potential corrective measures to address them.

A qualified individual able to identify vegetation to genus and species must conduct the wetland monitoring. The Department of Environmental Quality (DEQ) reserves the right to reject reports with substandard monitoring data.

The DEQ's WRD will determine if the performance standards have been met. If the performance standards have not been met, the WRD may require subsequent annual monitoring until final approval from the WRD can be granted.