

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



P.O. Box 30755  
LANSING, MICHIGAN 48909

**BILL SCHUETTE**  
ATTORNEY GENERAL

December 26, 2013

William I. McDonald  
McDonald & Marin, LLP  
115 Lakeshore Boulevard, Suite A  
Marquette, Michigan 49855

Via: Email and First Class Mail

**RE: MDEQ v A. Lindberg & Sons, Inc.**  
**File No.: 12-50208-CE**

Dear Mr. McDonald:

Enclosed please find a filed copy of the Consent Judgment with regard to the above-referenced matter for your records.

If you have any questions, please feel free to contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Harold J. Martin" followed by a stylized flourish.

Harold J. Martin  
Assistant Attorney General  
Environment, Natural Resources,  
and Agriculture Division  
525 W. Ottawa Street  
P.O. Box 30755  
Lansing, MI 48909  
(517) 373-7540

HJM:jls  
Enclosures  
cc: Dave Pingel, MDEQ  
Katelyn Wysocki, MDEQ  
Steve Casey, MDEQ - Marquette

LF:A.Lindberg/#2012-0012756-B/Letter-McDonald 2013-12-26

STATE OF MICHIGAN  
IN THE 25<sup>TH</sup> JUDICIAL CIRCUIT  
COUNTY OF MARQUETTE

MICHIGAN DEPARTMENT OF  
ENVIRONMENTAL QUALITY

Plaintiff,

Docket No.: 12-050208-CE

v

Honorable Thomas L. Solka

A. LINDBERG & SONS, INC.,  
a Michigan Corporation; BRICKYARD,  
L.L.C., a Michigan Limited Liability  
Company; and KONA RIDGE MINING,  
L.L.C. a Michigan Limited Liability  
Company,

FILED & ENTERED  
25th CIRCUIT COURT

DEC 19 2013

Defendants.

Marquette County Clerk

Harold J. Martin (P39234)  
Attorney for the Plaintiff  
Assistant Attorney General  
Environmental, Natural Resources,  
and Agriculture Division  
6<sup>th</sup> Floor, G. Mennen Williams Building  
525 West Ottawa Street  
Lansing, MI 48933  
517-373-7540

William I. McDonald (P17376)  
McDonald & Wolf, PLLC  
Attorneys for Defendants  
115 S. Lakeshore Boulevard  
Suite A  
Marquette, Michigan 49855  
906-226-6537

CONSENT JUDGMENT

In the 25<sup>th</sup> Judicial Circuit Court  
In the State of Michigan, on the  
\_\_\_\_\_ day of \_\_\_\_\_ 2013.

Present: Honorable Thomas L. Solka, Circuit Court Judge

The Plaintiff Michigan Department of Environmental Quality (MDEQ) and Defendants A. Lindberg and Sons, Inc., a Michigan Corporation, Brickyard, L.L.C., a Michigan Limited Liability Company, and Kona Ridge Mining, L.L.C., a Michigan Limited Liability Company, (hereinafter the Parties), agree that settlement of this action is in the public interest and consent to the entry of this Consent Judgment, without further litigation, as the most appropriate means of resolving the allegations raised by Plaintiff in the complaint filed with the Court on March 15, 2012. As evidenced by the signatures below, the Parties agree to, and shall be bound by, the terms and findings of this Judgment.

The entry of this Judgment by Defendants is neither an admission or a denial of liability with respect to any issue dealt with in this Judgment, nor an admission or denial of any factual allegations or legal conclusions stated or implied herein.

This Judgment requires the completion of specified activities by Defendant A. Lindberg & Sons, Inc. pursuant to Part 31, Water Resources Protection, MCL 324.3101 *et seq.*; Part 91, Soil Erosion and Sedimentation Control, MCL 324.9101 *et seq.*; Part 301, Inland Lakes and Streams, MCL 324.30101 *et seq.*; Part 303, Wetlands Protection, MCL 324.30301 *et seq.* of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA); and the administrative rules promulgated thereunder, upon that certain property located in Sections 17 and 18, Marquette Township, T48N, R25W, Marquette County, Michigan that is the subject of the complaint. (Exhibit A.)

NOW, THEREFORE, before taking any testimony, without trial of any issue of fact or law, and upon the consent of the Parties, by their attorneys, it is hereby ORDERED and ADJUDGED:

#### I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, MCL 324.30316, and Section 605 of the RJA, MCL 600.605. This Court also has personal jurisdiction over the Defendants. Defendants waive all objections and defenses that they may have with respect to the jurisdiction of the Court.

B. Venue is proper in this circuit pursuant to Section 1631 of the RJA, MCL 600.1631, MCL 324.3115(1), MCL 324.9113(1), MCL 324.30112, and MCL 324.30316.

C. The Court determines that the terms and conditions of this Consent Judgment are reasonable, adequately resolve the environmental issues raised in the complaint, and properly protect the interests of the people of the State of Michigan.

D. The Court shall retain jurisdiction over the Parties and subject matter of this action to enforce this Judgment and to resolve disputes arising under the same, including those that may be necessary for its construction, execution, or implementation.

## II. PARTIES BOUND

A. Plaintiff Michigan Department of Environmental Quality (MDEQ) is a principal department within the Executive Branch of the State of Michigan. MDEQ is the state agency mandated to provide for the protection of the natural resources of the state from pollution, impairment, and destruction. MCL 324.101, MCL 324.301, MCL 324.501, and Executive Orders 1973-2, 1976-8, and 1995-18.

B. Defendant A. Lindberg & Sons, Inc. is a Michigan corporation doing business in Marquette County and using the address 599 Washington Street, Ishpeming, Michigan 49849.

C. Defendant Brickyard, LLC is a Michigan limited liability company doing business in Marquette County and using the address 599 Washington Street, Ishpeming, Michigan 49849.

D. Defendant Kona Ridge Mining Company, LLC is a Michigan limited liability company doing business in Marquette County and using the address 599 Washington Street, Ishpeming, Michigan 49849.

E. Defendants at all times relevant to this cause of action are or were title holder to lands located in Sections 17 and 18 of Marquette Township, T45N, R25W, Marquette County, Michigan. The allegations in the complaint pertain to the parcel as designated in the complaint and herein referred to as the "Property." Brickyard Creek transects the property and wetlands are present on the property.

F. The provisions of this Consent Judgment shall be binding on the Parties, their officers, agents, successors, and assigns. No change or changes in the ownership or other legal status of the Defendants, including, but not limited to, any transfer of assets or of real

or personal property, shall in any way alter Defendants' responsibilities under this Judgment unless expressly agreed to by the MDEQ as an amendment to this Judgment. Defendants shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Property and shall also provide a copy of this Judgment to any subsequent owners or successors prior to the transfer of any ownership rights.

G. Defendants shall provide a copy of this Judgment to all contractors, subcontractors, and consultants that are retained to conduct any portion of the compliance activities to be performed pursuant to this Judgment, and to the employees overseeing environmental management of the Property within three (3) calendar days of the effective date of such retention.

H. Notwithstanding the terms of any contract(s) that Defendants may enter into with respect to the compliance activities to be performed pursuant to this Judgment, Defendants are responsible for compliance with the terms of this Judgment and shall ensure that their contractors, subcontractors, consultants, and employees perform all compliance activities in full conformance with the terms and conditions of this Judgment.

### III. STATEMENT OF PURPOSE

A. In entering into this Judgment, it is the mutual intent of the Parties that Defendants will do the following:

1. Prevent direct and indirect discharges of substances that are or may become injurious into the waters of the state;

2. Comply with Part 31, including current and future National Pollutant Discharge Elimination System (NPDES) permits issued by the MDEQ to Defendants for activities conducted at the Property;
3. Maintain adequate soil erosion and sedimentation controls to ensure that discharges of sediment and/or sediment-laden storm water are not discharged into waters of the state;
4. Submit a written certification to the DEQ that permanent stabilization of Site 1, Sites 2 and 2(a), Site 4, and Site 7 has occurred in accordance with Part 91 permits issued by the Marquette County Enforcing Agency and Permit-By-Rule permit issued by the MDEQ;
5. Conduct stream restoration activities on Brickyard Creek as described in this Judgment;
6. Comply with the terms of this Judgment; and
7. Pay an amount determined by mutual agreement in full settlement of Defendants' asserted civil liabilities, to include the amount of \$10,000 designated as Plaintiff's enforcement costs,

#### IV. DEFINITIONS

- A. "Effective Date" means the date that the Court enters this Judgment.
- B. "Judgment" means this Consent Judgment and any attachment hereto, including any future modifications, any reports, plans, specifications, and schedules required by the Consent Judgment which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Judgment.

C. Water Resources Division or "WRD" means the Division of the MDEQ and any successor entities charged with implementing Part 31, Part 91, Part 301, and Part 303 of the NREPA.

D. "Party" means the Plaintiff or Defendants. "Parties" mean the Plaintiff and Defendants.

E. "Permit-By-Rule" means Rule 2190 of Michigan's Administrative Code, 2005 ACS R323.2190 along with NPDES No. MIR111675 and future NPDES permits authorizing storm water discharges in accordance with the rule.

F. "Plaintiff" means the Michigan Department of Environmental Quality (MDEQ), its successor entities, and those authorized person or entities acting on its behalf.

G. Unless otherwise defined herein, all terms used in this document, which are defined in pertinent parts of the NREPA and associated administrative rules and/or permits or the federal Clean Water Act, shall have the same meaning in this document as in those pertinent parts, rules, and/or permits.

#### V. COMPLIANCE WITH STATE AND FEDERAL LAWS

All actions required to be taken pursuant to this Judgment shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate state and federal laws, rules, and regulations including the procurement of all necessary permits and approvals.

## VI. COMPLIANCE PROGRAM

A. Defendants shall comply with all Part 31, Part 91, Part 301, and Part 303 requirements, including obtaining and maintaining all required permits and seeking permit modification as required under law.

B. Defendants shall not conduct any activity within regulated wetlands contained within the area depicted by Exhibit A, except as provided by this Judgment, or as authorized by separate permit issued by the WRD. This Judgment does not obviate the need to acquire additional state, local, or federal permits as may be required by law.

C. Defendants shall comply with the Permit-By-Rule requirements.

D. Defendants shall implement all stream restoration activities detailed in the MDEQ approved plan prepared by A. Lindberg and Sons, Inc. and UP Engineers and Architects, Inc. dated November 30, 2005, and last revised on March 21, 2013, being sheets C1.0, C5.1, and C6.1, and the construction conditions which are attached as Exhibit B.

E. Defendants shall notify the MDEQ immediately after station stakes are placed to allow MDEQ to verify that stationing encompasses all areas of the stream channel reconstruction prior to Defendants undertaking additional stream restoration activities. If the station staking is acceptable, the MDEQ will provide a written notice to proceed with the required stream restoration activities.

F. Defendants shall notify the MDEQ at least five (5) days prior to the start of construction activities after station staking has been accepted.

G. Defendants shall commence the stream restoration activities not earlier than May 15, 2014, and defendants shall complete the stream restoration activities and the installation of permanent soil erosion and sedimentation control measures around the

stream restoration location not later than August 1, 2014. Upon completion of the stream restoration activities, the Defendants shall provide to the WRD, at the address provided in Section XI. Notices of this Judgment, written notification of completion of the stream restoration activities.

H. Defendants shall, within thirty (30) days of the effective date of this Judgment, provide to the WRD a conservation easement in favor of the MDEQ upon the Wetland Mitigation Area and other wetlands on the Property. Defendants shall provide as part of the conservation easement a legal description for the parcel of land to be included within the conservation easement. The conservation easement required by this Judgment shall be conveyed to the MDEQ and provided to the WRD on a form provided as Exhibit C of this Judgment.

I. No later than August 1, 2014, Defendants shall have completed all activities under the attached approved plan provided as Exhibit B. Defendants shall ensure permanent stabilization of Site 1, Sites 2 and 2(a), Site 4, and Site 7 (as shown on Exhibit A) not later than September 30, 2014. All temporary soil erosion and sedimentation control measures, such as silt fence, will be removed once permanent stabilization is attained for Site 1, Site 2, Site 2(a), Site 4, and Site 7.

## VII. EMERGENCY RESPONSE

A. In the event of a discharge to surface waters or other spill of polluting materials to the ground or water attributable to Defendants' activities, Defendants shall undertake the following measures:

1. Upon the discovery of a discharge of any waste, wastewater, or other spill of polluting materials to the ground or water, Defendants shall take immediate corrective measures to contain any losses of waste, wastewater, or other polluting materials to prevent any further discharge or spill to waters of the state.
2. Defendants shall immediately upon discovery of any discharge of waste, wastewater, or other polluting materials to surface waters of the state notify the WRD Upper Peninsula District Office. Emergency notification shall be as follows:
  - a. Monday through Friday during the hours of 8:00 AM to 5:00 PM, contact the MDEQ WRD Upper Peninsula District Office.
  - b. at all other times, contact the Pollution Emergency Alerting System (PEAS) Hotline at 800-292-4706.
3. In addition to the verbal notification requirement above, Defendants shall provide written notification to the WRD Upper Peninsula District Supervisor and the Chief of WRD Enforcement Unit within ten (10) calendar days following the discovery of any discharge of waste, wastewater, or other spill of polluting materials to the ground or water. The written notification shall include:
  - a. a description and cause of the discharge or other spill, including an estimate of the discharge volume, and any analytical data in the possession of the Defendants related to the discharge or spill;

- b. the estimated duration of the discharge or other spill, including the date and time of the commencement and cessation of the discharge to the extent known;
- c. the corrective measures that were or will be implemented to prevent a future occurrence; and
- d. copies of all pertinent records maintained pursuant to Section IX. of this Judgment.

#### VIII. REPORTING

A. Defendants shall verbally report any violation of this Judgment, excluding discharges to surface waters or other spill of polluting materials to the ground or water reported in accordance with Section VII above, to the WRD Upper Peninsula District Supervisor not later than the close of the next business day following detection of such violation and shall provide a written report within fourteen (14) business days after detection of such violation to both the WRD Upper Peninsula District Supervisor and the Chief of the WRD Enforcement Unit. The written report shall include a detailed description of the violation, the precise cause or causes of the violation, a detailed description of any action taken or proposed to correct the violation, and a schedule for the implementation of any proposed corrective action. Defendants shall report any anticipated violation of this Consent Judgment to the MDEQ, WRD Upper Peninsula District Supervisor in advance of the relevant deadlines whenever reasonably practicable.

## IX. RECORD RETENTION AND ACCESS TO INFORMATION

A. Until five (5) years after the termination of this Judgment, Defendants shall retain, and shall instruct its contractors, agents, and representatives to preserve, all non-identical copies of records and documents, including records or documents in electronic form, that this Judgment requires Defendants to create or maintain.

B. Upon MDEQ request, Defendants shall provide to the MDEQ copies of all documents and information within the possession or control of Defendants, its employees, contractors, agents, or representatives that this Judgment requires Defendants to create or maintain. Defendants shall not prevent its employees, contractors, agents, or representatives from discussing with MDEQ any relevant facts, except for privileged information, concerning the performance of activities undertaken pursuant to this Judgment.

C. This Judgment in no way limits or affects any right to obtain information held by the MDEQ pursuant to applicable laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendants to maintain records or information imposed by applicable laws, regulations, or permits.

## X. ACCESS

A. Upon the Effective Date of this Judgment and to the extent the property covered by this Judgment is owned, controlled by, or available to Defendants or successors in interest, the MDEQ, as well as its authorized employees, contractors, and consultants shall, upon presentation of proper credentials, have access at all reasonable times to the Property for the purpose of conducting any activity for which access is required for the

implementation of this Judgment or the continued evaluation of Defendants' compliance with Part 31, Part 91, Part 301, and Part 303 of the NREPA, including, but not limited to:

1. Monitoring activities taking place pursuant to this Judgment;
2. Verifying any data or information submitted to the MDEQ;
3. Conducting investigations relating to discharges of potentially injurious substances at or from the Property;
4. Obtaining samples;
5. Assessing the need for corrective action or other response activities at or near the Property;
6. Assessing pollution control structures to assure the effectiveness and integrity of the structure(s);
7. Inspecting and copying non-privileged records, inspection logs, contracts, and other documents maintained pursuant to this Judgment;
8. Communicating with Defendants, Defendants' personnel, representatives, or consultants for the purpose of assessing compliance with this Judgment;
9. Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Judgment or Part 31, Part 91, Part 301, and Part 303 of the NREPA;
10. Assuring the protection of public health, safety, and welfare and the environment; and

11. Conducting tests and inspections pursuant to Part 31, Part 91, Part 301, and Part 303 of the NREPA.

B. To the extent that property where activities are performed by the Defendants under this Judgment is owned or controlled by persons other than Defendants, Defendants shall use its best efforts to secure from such persons access for the Parties and their authorized employees, contractors, and consultants. Defendants shall provide the MDEQ with a copy of each access agreement secured pursuant to this section. For purposes of this paragraph, "best efforts" includes, but is not limited to, providing reasonable consideration acceptable to the owner.

#### XI. NOTICES

A. Except where this Judgment already identifies the persons to whom a document or information is to be submitted, any submittal, notice, report, documentation, or recitation required by this Judgment shall be submitted to the attention of:

For Plaintiffs:

Mitch Koetje  
Upper Peninsula District Office  
1504 West Washington Street  
Suites A and B  
Marquette, MI 49855  
906-202-1464

and

John Gustafson  
Upper Peninsula District Office  
1504 West Washington Street  
Suites A and B  
Marquette, MI 49855  
906-203-9887

and Barry Selden  
Water Enforcement Unit Chief  
525 West Allegan Street  
P.O. Box 30458  
Lansing, Michigan 48909-7958  
517-284-5490

For Defendant: Roger Crimmins  
599 Washington Street  
Ishpeming, Michigan 49849  
906-486-4459

Either party may substitute others for those designated to receive such notices by providing written notice to the other party.

## XII. DELAYS IN PERFORMANCE, EXTENSION REQUESTS, AND FORCE MAJEURE

A. Defendants shall perform the requirements of this Judgment within its time limits, unless events, which constitute a Force Majeure, prevent or delay performance or unless the WRD Chief grants an extension pursuant to Paragraph G of this section.

B. Any performance delay attributable to a Force Majeure shall not be deemed a violation of Defendants' obligations under this Judgment in accordance with this section. For this Judgment's purpose, Force Majeure means an occurrence or non-occurrence of the requirements under this Judgment arising from causes beyond the control of Defendants and for which Defendants are without fault for the occurrence or non-occurrence, including, but not limited to: an act of God; inordinate delay by the MDEQ of submissions required under this Judgment; and the acts or omissions of a third party not under contractual obligations to Defendants that could not have been avoided or overcome through Defendants' due diligence and that resulted in a delay of performance of an obligation

under this Judgment. Force Majeure does not include, among other things, unanticipated or increased costs, changed financial circumstances (including a failure to obtain funding), or failure to apply for a permit or license as a result of Defendants' action or omission.

C. Defendants shall telephone the WRD Upper Peninsula District Supervisor within forty-eight (48) hours of discovering any event, which causes a delay in its compliance with any provision of this Judgment. Verbal notice shall be followed by written notice to both the WRD Upper Peninsula District Supervisor and Chief of the WRD Enforcement Unit within ten (10) calendar days and shall describe in detail the delay's anticipated length, the delay's precise cause or causes, the measures that Defendants have taken to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Defendants shall use all reasonable measures to avoid or minimize any such delay.

D. Defendants' failure to comply with the notice requirements of Paragraph C of this section shall render the Force Majeure provisions of this section void as to the particular incident involved. The MDEQ may, at its sole discretion and in appropriate circumstances, provide Defendants with a written waiver of the notice requirements of Paragraph C of this section.

E. If the parties agree that the delay or anticipated delay was beyond the control of Defendants, this may be so stipulated, and the parties may petition the Court for an appropriate Consent Judgment modification. Defendants bear the burden of proving that any delay was beyond its reasonable control and of showing that Defendants have met the requirements under this section.

F. In the absence of a Force Majeure, Defendants and the MDEQ agree that the WRD Chief may, but in no circumstances is obligated to, grant Defendants an extension of the specified deadlines set forth in this Judgment. Any extension shall be preceded by a timely written request, received by the MDEQ no later than ten (10) business days prior to the pertinent deadline, which shall include:

1. An identification of the specific deadline that will not be met.
2. A detailed description of what will prevent Defendants from meeting the deadline.
3. A description of the measures Defendants have taken or intend to take to meet the required deadline.
4. The length of the extension requested and the specific date on which the obligation will be met.

The WRD Chief shall respond promptly to such requests and shall not unreasonably withhold approval for such requests.

G. Any extension of the specified deadlines or other modifications and amendments of this Judgment shall be signed by both parties, shall have as their effective date the date on which they are signed by the WRD Chief, and shall be incorporated into and become an enforceable part of this Judgment upon approval of the Court. A denial by the WRD Chief that an event constitutes a Force Majeure constitutes a final decision on the matter and is not subject to appeal and review by the court.

H. An extension of one compliance date based upon a particular incident does not mean that Defendants qualify for an extension of a subsequent compliance date without providing proof that an extension to a separate requirement under this Judgment is justifiable.

### XIII. REIMBURSEMENT OF COSTS AND PAYMENT OF AGREED CIVIL FINES

A. Defendants agree to pay the total amount of \$50,000.00 as full settlement of enforcement costs and civil liabilities alleged by Plaintiff in its Complaint in this matter of DEQ-alleged violations of past violations of Part 31, Part 91, Part 301, and Part 303 of the NREPA, of which the total amount of \$10,000 is allocated by agreement of the parties to Plaintiff's alleged enforcement costs.

B. Defendants shall pay said amount by certified or cashier's check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 W. Ottawa St., Lansing, Michigan 48933 within thirty (30) days of the effective date of this Judgment. To ensure proper credit, all payments made pursuant to this Judgment must include the Payment Identification Number *WRD-60006* on the face of all checks, or in the cover letter with the payments.

#### XIV. DEMANDED FINES

A. The Parties stipulate to the demand of fines by the Defendants in the following manner should violations of this Judgment occur:

1. Any failure to comply with any compliance date in this Judgment shall result in demanded fines as follows:
  - a. \$200.00 for the first day of alleged violation;
  - b. \$300.00 for the second consecutive day of alleged violation; and
  - c. \$500.00 for the third consecutive day of alleged violation and every consecutive day thereafter.
2. Except as provided under XIV (A)(1), an alleged failure by Defendants to comply with any other provisions of Section VI or any other provision of this Judgment shall result in a demanded fine of \$250.00 per day, per violation.

B. All demanded fines shall be paid within thirty (30) days of Defendants' receipt of the demand from the MDEQ, unless the Court orders otherwise in accordance with Paragraph D of this Section. Demands for payment of fines shall be sent via certified mail to ensure accuracy regarding the date of receipt.

C. Defendants shall pay all demanded fines by certified or cashier's check made payable to the State of Michigan and delivered to the DEQ, Revenue Control Unit, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the DEQ, Revenue Control Unit, 1st Floor, Van Wagoner Building, 425 W. Ottawa St., Lansing, Michigan 48933. To ensure proper credit, all payments made pursuant to this Consent Judgment must include

the Payment Identification Number *WRD-60006* on the face of all checks or in the cover letter with the payment.

D. Defendants reserve the right to dispute the factual basis upon which MDEQ demands fines, in accordance with Section XVI of this Consent Judgment.

E. Liability for or payment of demanded fines under this Judgment shall not preclude the MDEQ from seeking injunctive relief or other relief to which the MDEQ is entitled for Defendants' failure to comply with other specific requirements of this Judgment, or failure to comply with Part 31, Part 91, Part 301, and Part 303 of the NREPA or any other applicable law, except that Plaintiff shall not seek additional monetary relief for any violations for which Plaintiff has accepted demanded fines under this Judgment.

#### XV. RESERVATION OF RIGHTS

A. With respect to any violations not expressly addressed and resolved by this Judgment, the MDEQ reserves the right to pursue any other remedies to which it is entitled for any failure to comply with the requirements of any state or federal law, including the NREPA and its rules.

B. This Judgment does not affect Defendants' responsibility to comply with any other applicable state, federal, or local laws or regulations including the procurement of required permits and/or approvals; or with any order of this or any court, including, without limitation, any corrective action or similar requirements under Part 31, Part 91, Part 30, and Part 303 of the NREPA or its rules or any amendments thereto.

C. This Judgment does not limit the rights of the Defendants or the State of Michigan against any third parties.

## XVI. GENERAL PROVISIONS

### A. Severability.

Should a court of competent jurisdiction declare any provision of this Consent Judgment to be unenforceable, the remaining provisions shall remain in effect.

### B. Modification.

Any party to this Judgment may petition the Court for modification of this Judgment including its termination prior to expiration of the effective period. Any modification must be in writing and approved by the Court. No party may petition the Court for a modification of this Judgment without first having made a good faith effort to reach agreement with the other party on the terms of any such modification. The parties may petition the Court to modify any requirement or provision of this Judgment by mutual agreement or may modify this Judgment through a writing signed by authorized representatives of the Parties.

### C. Other Laws.

This Judgment in no way affects the Defendants' responsibility to comply with any other applicable state or federal laws or local regulations or with any order of this or any other Court including without limitation, any amendments to Part 31, Part 91, Part 301, and Part 303 of NREPA or its rules or regulations.

### D. Settlement.

This Judgment is in settlement and satisfaction of all civil claims against Defendants alleged by the MDEQ in the complaint.

## XVII. RETENTION OF JURISDICTION

Prior to termination of this Judgment in accordance with Section XVII below, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Judgment, assess disputed demanded fines, resolve all other disputes arising under its terms, or to take any action necessary or appropriate for construction or implementation of this Judgment.

## XVIII. TERMINATION

This Judgment shall terminate upon written request of Defendants and written approval from the MDEQ along with approval of this Court through the issuance of a Satisfaction of Judgment. The written request of Defendants shall include a certification by Defendants that it has: (1) paid in full all fines and costs owed to the State of Michigan under this Judgment; (2) completed all site restoration activities and obligations as required in this Judgment; and (3) has not received a Notice Letter or other document from the MDEQ alleging a violation of Part 31, Part 91, Part 301, and Part 303 of this Judgment for three (3) consecutive years. Provided that such certification is made and not reasonably disputed, the MDEQ will not withhold agreement to terminate this Judgment.

## XIX. SEPARATE DOCUMENTS

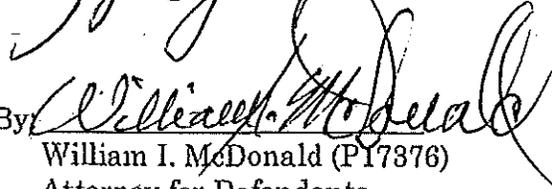
This Judgment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Judgment may be executed in duplicate original form.

XX. SIGNATORIES

The signatories to this Judgment certify that they are authorized to execute this Judgment and to legally bind the Parties they represent to the requirements of this Judgment.

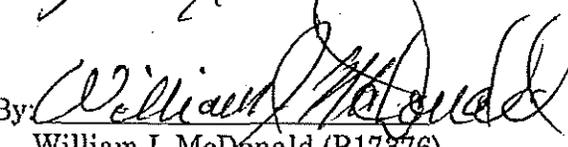
FOR A. LINDBERG and SONS, INC.:

By:  Dated: 11/1/13

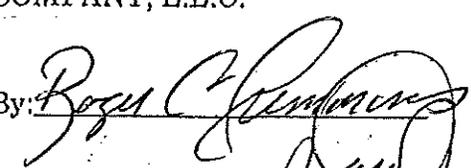
By:  Dated: 11/1/13  
William I. McDonald (P17376)  
Attorney for Defendants

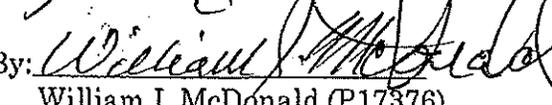
FOR BRICKYARD, L.L.C.

By:  Dated: 11/1/13

By:  Dated: 11/1/13  
William I. McDonald (P17376)  
Attorney for Defendants

FOR KONA RIDGE MINING COMPANY, L.L.C.

By:  Dated: 11/1/13

By:  Dated: 11/1/13  
William I. McDonald (P17376)  
Attorney for Defendants

FOR PLAINTIFFS:

Michigan Department of Environmental  
Quality

By:

Dan Wyant  
Dan Wyant, Director

Dated:

12.11.13

By:

Harold J. Martin  
Harold J. Martin (P39234)  
Attorney for Plaintiff

Dated:

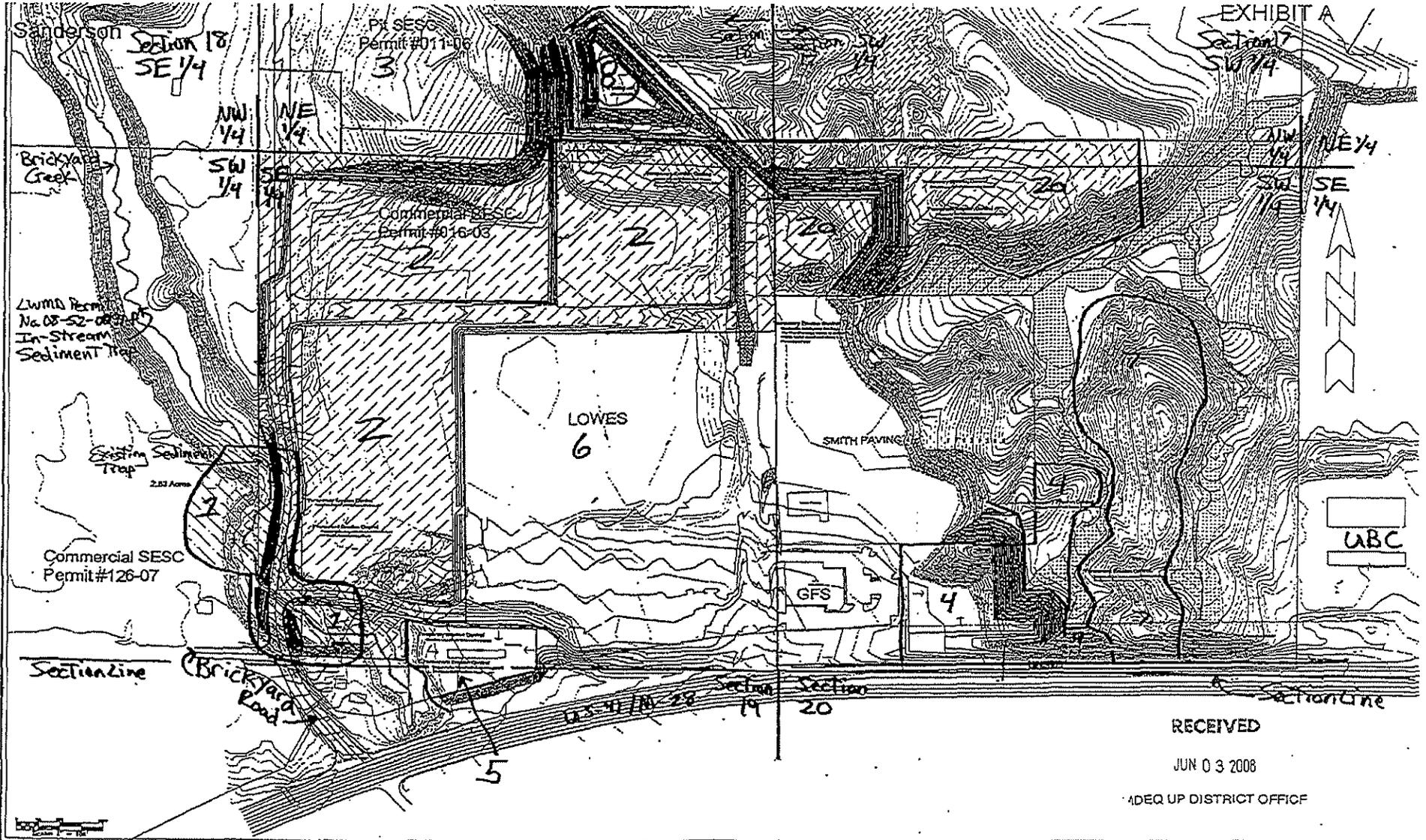
12/16/13

IT IS SO ORDERED and ADJUDGED this 18 day of Dec, 2013.

**Thomas L. Solka**

Honorable Thomas L. Solka

# **EXHIBIT A**



RECEIVED

JUN 03 2008

ADEQ UP DISTRICT OFFICE

<p>A. Lindberg &amp; Sons, Inc.          2000 1st Ave.          Lansing, MI 48906          (517) 487-0000</p>	<p>A. Lindberg &amp; Sons, Inc.          2000 1st Ave.          Lansing, MI 48906          (517) 487-0000</p>	<p>             --- Proposed Right-of-Way              --- Existing Right-of-Way              --- Easement              --- Other              --- Contour              --- Property Line              --- Section Line              --- U.S. Boundary         </p>	<p>             --- 2000 Contour              --- 2005 Contour              --- 2010 Contour              --- 2015 Contour              --- 2020 Contour              --- 2025 Contour              --- 2030 Contour              --- 2035 Contour              --- 2040 Contour              --- 2045 Contour              --- 2050 Contour              --- 2055 Contour              --- 2060 Contour              --- 2065 Contour              --- 2070 Contour              --- 2075 Contour              --- 2080 Contour              --- 2085 Contour              --- 2090 Contour              --- 2095 Contour              --- 2100 Contour         </p>	<p>             --- 2000 Contour              --- 2005 Contour              --- 2010 Contour              --- 2015 Contour              --- 2020 Contour              --- 2025 Contour              --- 2030 Contour              --- 2035 Contour              --- 2040 Contour              --- 2045 Contour              --- 2050 Contour              --- 2055 Contour              --- 2060 Contour              --- 2065 Contour              --- 2070 Contour              --- 2075 Contour              --- 2080 Contour              --- 2085 Contour              --- 2090 Contour              --- 2095 Contour              --- 2100 Contour         </p>	<p>             ALS Site Development Plan              Erosion Control Measures              05/19/08         </p>
---	---	---	---	---	--

# **EXHIBIT B**

## Exhibit B

### Stream Re-Construction Conditions

Authority granted by this Consent Judgment does not waive permit requirements under Part 91, Soil and Erosion Control, PA of 451 of 1994, as amended, or the need to acquire applicable permits from the County Enforcing Agent. Contact: Hampton Waring, Marquette County Soil and Water Conservation District, 1030 Wright Street, Marquette, MI 49855, for further information regarding Part 91 of PA 451.

Project shall be completed in accordance with the plans referenced in this Exhibit B.

Notification shall be made to the Department of Environmental Quality, Water Resources Division, 5 days prior to starting the project. Notify Mitch Koetje 906-202-1464 and John Gustafson 906-203-9887.

The 100-year flood elevation of Brickyard Creek is estimated to be 5.5 feet above the stream bottom.

No work shall be done within the stream channel from October 15 through May 15.

All construction operations relating to or part of this project shall be confined to the Lindberg's ownership limits or acquired easements.

The riprap material shall be clean rock of sufficient size to be stable and contain no dirt or organic material which is biodegradable.

If the project, or any portion, is stopped and lies uncompleted for any length of time other than that encountered in a normal work week, every precaution shall be taken to prevent sediment discharge to the stream and wetlands and to protect the uncompleted work from erosion.

No work shall be done in the stream during period of above-normal flow except as necessary to prevent erosion.

Project shall be constructed in accordance with the Administrative Rules for Part 301, 1994 PA 451, as amended, which are a part of this permit, being Rules 281.823 and 281.824.

All excess material shall be placed on an upland site, and mulched and seeded to prevent erosion into waters or wetland areas.

All fill shall be clean inert material.

Unless specifically stated in the project plans, construction pads, haul roads, temporary structures, or other structural appurtenances to be placed on or over bottomlands and/or wetlands are not authorized by this Judgment and shall not be constructed unless authorized by separate permit or permit revision granted in accordance with applicable law.

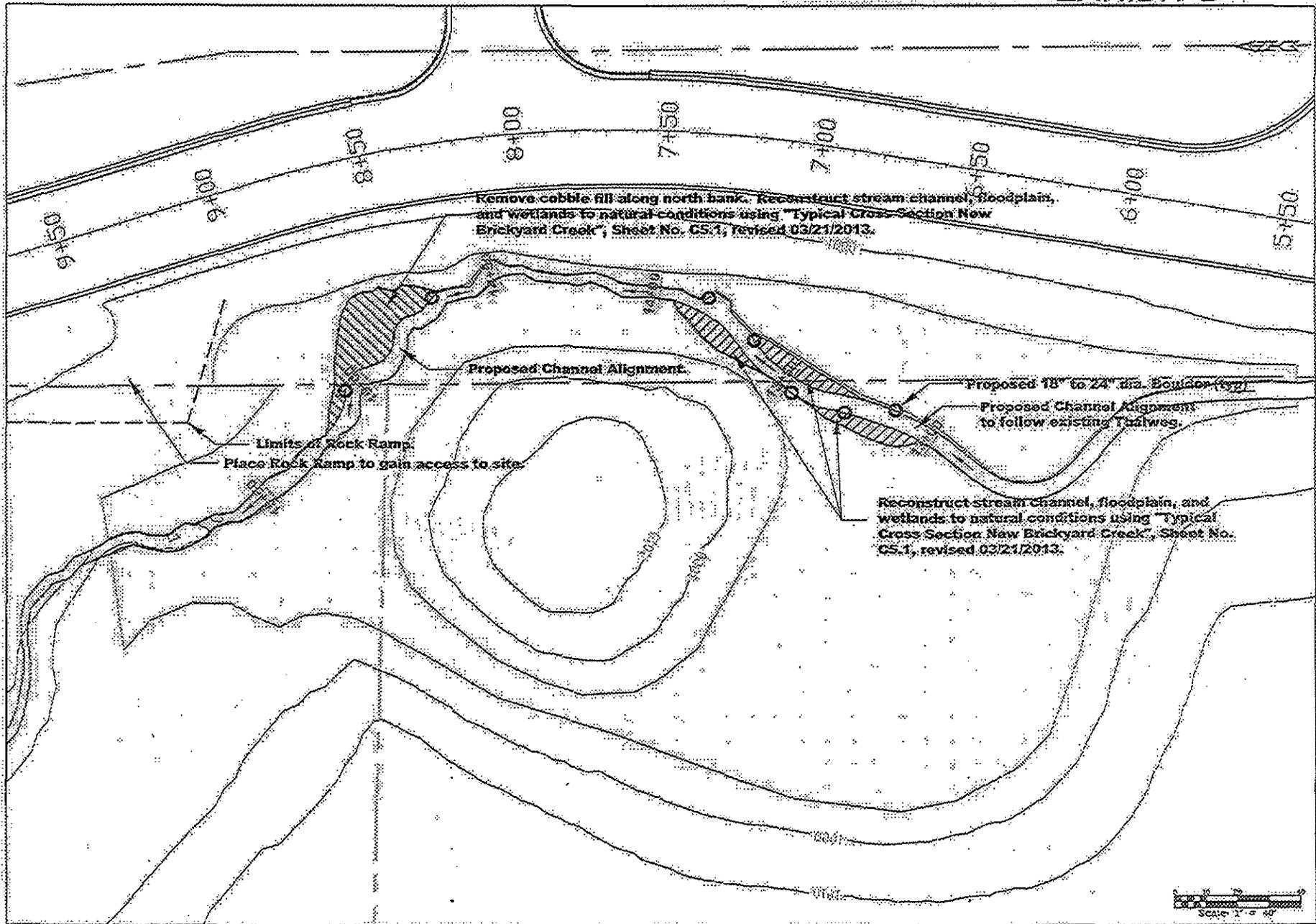
### **STREAM MITIGATION AND MONITORING**

Lindberg shall designate one (1) project construction manager who shall have full authority over the construction of this project. The authority of the project construction manager shall include the ability to require that all employees, contractors, and subcontractors make changes or stop work in order to comply with the plans, specifications and conditions of this permit. Lindberg shall identify the responsible project construction manager to the Water Resources Division within 15 days of the date of this Judgment.

Prior to the initiation of construction activities, all non-work wetland areas adjacent to the construction areas shall be bounded by filter fabric fencing to prevent erosion into and sedimentation of the stream and wetland, and to prevent other impacts from the construction activities. The fencing shall be maintained throughout the construction process in accordance with the Michigan Department of Transportation Standard Plans.

No permanent or temporary fill or excess soil or other materials shall be placed in any stream or wetland or surface water area not specifically authorized by the restoration plan.

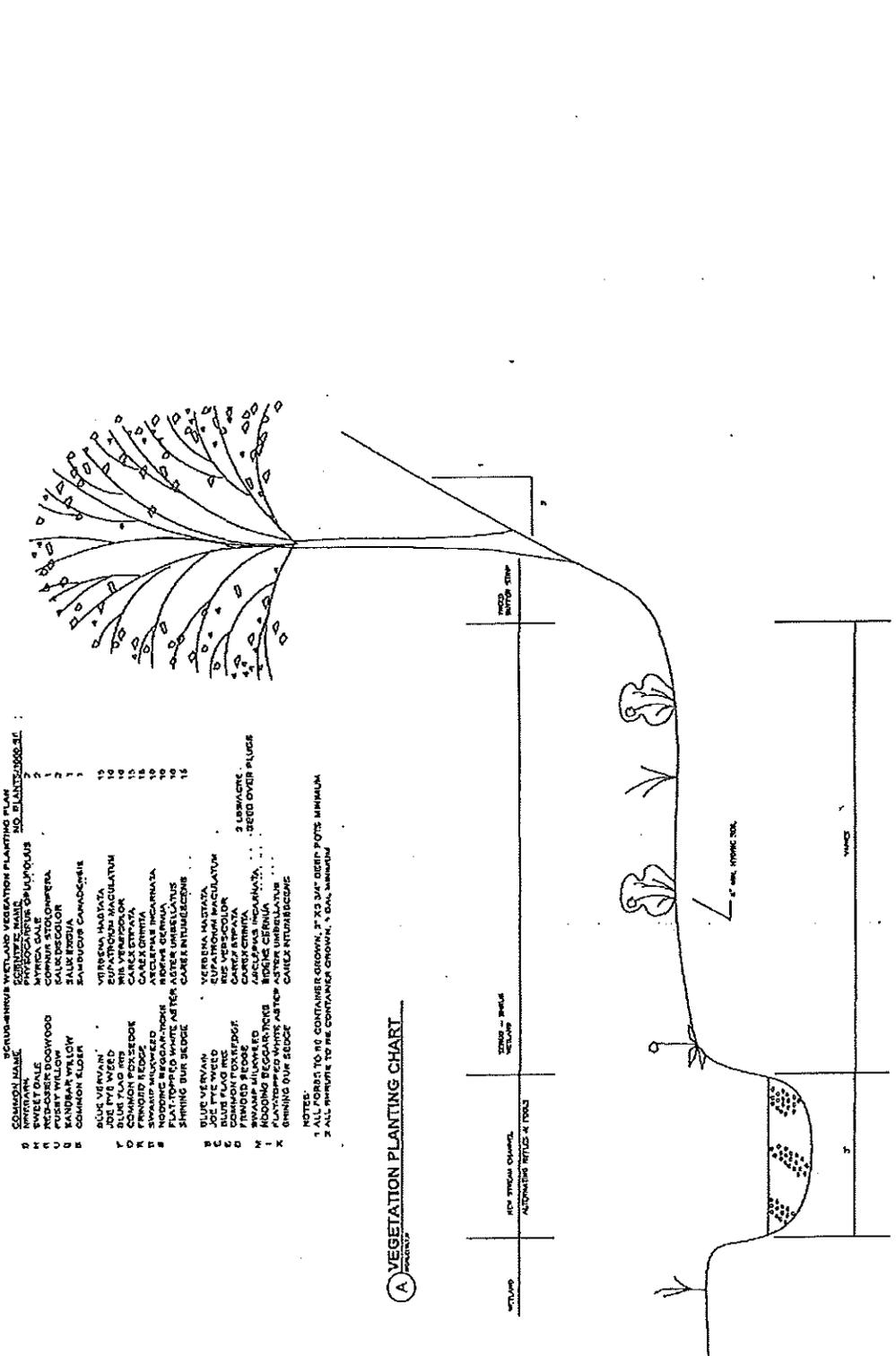
# EXHIBIT B



<p>A. Lindberg &amp; Sons, Inc. 385 Washington Street Shawmut, WI 53089 (608) 699-2800</p>	<p>A. Lindberg &amp; Sons, Inc. 209 Wisconsin Street Shawmut, WI 53089 (608) 699-2800</p>	<p>Brickyard Creek Construction Activities</p>	<p>Brickyard Creek, Marquette County, Michigan</p>	<p>DATE: 03/21/2013</p>	<p>SHEET NO: 6 SCALE: C1.0</p>
--	---	--	--	-------------------------	------------------------------------



DATE	NOV 11 2003
PROJECT	BRICKYARD CREEK STREAM RELOCATION AND WETLAND MITIGATION
CLIENT	MANQUETTE, MICHIGAN
SCALE	AS SHOWN
DRAWN BY	VA. ENGINEERS & ARCHITECTS, INC.
CHECKED BY	VA. ENGINEERS & ARCHITECTS, INC.
APPROVED BY	VA. ENGINEERS & ARCHITECTS, INC.
DATE	NOV 11 2003



- COMMON NAME
- 1 NITIDIFLORA
  - 2 SWEET GALE
  - 3 SWEET GALE
  - 4 PUGNUT WILLOW
  - 5 SANDBAR WILLOW
  - 6 COMMON ELDER
  - 7 BLUE VERNAIN
  - 8 JOE PYE WEDG
  - 9 BLUE FLAG IRIS
  - 10 FROG BIT
  - 11 SWAMP MILKWEEED
  - 12 SPANISH FLAG
  - 13 PLANT-TOPEO SHALIC
  - 14 SHRIMP BUR SEDGE
  - 15 BLUE VERNAIN
  - 16 JOE PYE WEDG
  - 17 BLUE FLAG IRIS
  - 18 FROG BIT
  - 19 SWAMP MILKWEEED
  - 20 ADDING BEEGARTREE
  - 21 SPANISH FLAG
  - 22 SHRIMP BUR SEDGE
- SYMBOLS TO BE CONTAINED WITHIN 2' TO 3' DEEP POTS MINIMUM
- 1 ALL PLANTS TO BE CONTAINED WITHIN 2' TO 3' DEEP POTS MINIMUM

(A) VEGETATION PLANTING CHART

(B) TYPICAL CROSS SECTION BRICKYARD CREEK WETLAND MITIGATION

# **EXHIBIT C**

# EXHIBIT C

## AGREEMENT FOR CONSERVATION EASEMENT

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created on \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (name) married/single individual(s) (*circle one*), or corporation, partnership, municipality, or limited liability company (*circle one*), whose address is \_\_\_\_\_ (Grantor) and the Michigan Department of Environmental Quality (MDEQ), whose address is, P.O. Box 30458, Lansing, Michigan 48909-7958 or Constitution Hall, 2nd Floor South, 525 West Allegan Street, Lansing, Michigan 48933 (Grantee).

The Grantor is the fee simple title holder of real property located in (*circle one*) the Township/City of \_\_\_\_\_ County, and State of Michigan, legally described in Exhibit A.

The MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and

Pursuant to the Consent Judgment between \_\_\_\_\_ and the MDEQ, Case number \_\_\_\_\_, (Consent Judgment \_\_\_\_/\_\_\_\_/20\_\_), Grantor has agreed to grant the MDEQ a Conservation Easement that protects the wetland mitigation site and/or the remaining wetlands on the property and restricts further development to the area legally described in Exhibit B. The Conservation Easement (the Easement Premises) consists of approximately \_\_\_\_\_ acre(s). A survey map depicting the Easement Premises is attached as Exhibit C. The MDEQ shall record this Agreement with the county register of deeds.

ACCORDINGLY, Grantor hereby conveys unto the Grantee, forever and in perpetuity, this Conservation Easement as set forth in this Agreement pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. The purpose of this Agreement is to protect the functions and values of existing or established wetlands and its natural resource values on the Easement Premises consistent with the Consent Judgment and the protection of the benefits to the public derived from wetlands and integral habitat, by requiring Grantor to maintain the Easement Premises in its natural and undeveloped condition.
2. Except as authorized under the Consent Judgment issued on \_\_\_\_/\_\_\_\_/20\_\_ or as otherwise provided in this Agreement, Grantor shall refrain from and prevent any other person from altering or developing the Easement Premises in any way. This includes, but is not limited to:
  - a) Alteration of the surface topography;
  - b) Creation of paths, trails, or roads;

## EXHIBIT C

- c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended;
  - d) Dredging, removal, or excavation of any soil or minerals;
  - e) Drainage of surface or groundwater;
  - f) Construction or placement of any structure;
  - g) Plowing, tilling, mowing or cultivating the soils or vegetation;
  - h) Alteration or removal of vegetation, including the planting of non-native species;
  - i) Ranching, grazing, farming;
  - j) Use of chemical herbicides, pesticides, fungicides, fertilizers, spraying with biocides, larvicides or any other agent or chemical treatments, unless as part of an MDEQ-approved management plan;
  - k) Construction of unauthorized utility or petroleum lines;
  - l) Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids or other waste materials, including accumulated vegetative debris, such as grass clippings, leaves, yard waste or other material collected and deposited from areas outside the Easement Premises;
  - m) Use or storage of automobiles, trucks or off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles;
  - n) Placement of billboards or signs, except as otherwise allowed in the Consent Judgment or this Agreement;
  - o) Use of the wetland for the dumping of untreated storm water or the directing of treated storm water to the Easement Premises at a volume that adversely impacts the hydrology of the wetland;
  - p) Actions or uses detrimental or adverse to water conservation and purity, and fish, wildlife or habitat preservation.
3. Cutting down, burning, destroying or otherwise altering or removing trees, tree limbs, shrubs or other vegetation, whether living or dead, is prohibited within the Easement Premises, except with the written permission of Grantee, expressly for the removal of trees or limbs to eliminate danger to health and safety; to reduce a threat of infestation posed by diseased vegetation, invasive non-native plant species that endanger the health of native species or as otherwise provided in the MDEQ-approved Management Plan for the Easement Premises.
  4. Grantor is not required to restore the Easement Premises due to alterations resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable; natural causes or natural disasters, such as unintentional fires, floods, storms or natural earth movement.
  5. Grantor, or its authorized agents or representatives, may enter the Easement Premises to perform activities within the Easement Premises consistent with the Consent Judgment or the mitigation requirements. Grantor shall provide 5 days notice to the Grantee of undertaking any mitigation activity, even if the mitigation project has been conceptually approved. Any activities undertaken pursuant to the Consent Judgment, a mitigation project or this Agreement shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.
  6. Grantor warrants that Grantor has good and sufficient title to the Easement Premises described in Exhibit B.
  7. Grantor warrants that any other existing interests or encumbrances in the Easement Premises have been disclosed to the MDEQ.
  8. Grantor warrants that to the best of Grantor's knowledge no hazardous substances or hazardous or toxic wastes have been generated, treated, stored, used, disposed of, or deposited in or on the property.
  9. This Agreement does not grant or convey to Grantee or members of the general public any right to possession or use of the Easement Premises.
  10. Grantor shall continue be responsible for the upkeep and maintenance of the Easement Premises to the extent it may be required by law.

## EXHIBIT C

11. Grantee and its authorized employees and agents as shown in Exhibit D may enter the Easement Premises at reasonable times to determine whether the Easement Premises are being maintained in compliance with the terms of this Agreement, mitigation or other conditions of the Consent Judgment; and for purposes of taking corrective actions for failure to comply. If Grantee is entering the Easement Premises for purpose of taking corrective actions, Grantor shall be provided with 14 days notice to provide the opportunity to cure the failure to comply.
12. This Agreement shall be binding upon the successors and assigns of the parties and shall run with the land in perpetuity, unless modified or terminated by written agreement of the parties.
13. This Agreement may be modified only in writing through amendment of the Agreement. Any modification shall be consistent with the purpose and intent of the Agreement.
14. In addition to the right of the parties to enforce this Agreement, it is also enforceable by others against the owner of the land in accordance with Part 21, Subpart 11 of the NREPA, MCL 324.2140 et seq, as amended.
15. Grantor shall indicate the existence of this Agreement on all future deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement Premises.
16. A delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the conditions of this Agreement.
17. This Agreement shall be liberally construed in favor of maintaining the purpose of the Conservation Easement.
18. If any portion of this Agreement is determined to be invalid by a court of law, the remaining provisions will remain in force.
19. This Agreement will be construed in accordance with Michigan law. All legal action related to this conservation easement must be filed and pursued in Michigan state courts.
20. In addition to the terms of the Consent Judgment, this document sets forth the entire agreement of the parties. It is intended to supersede all prior discussions or understandings.
21. Within 90 days after this Agreement is executed, Grantor shall place and maintain, at Grantor's expense, signs, fences, or other suitable markings along the Easement Premises to clearly demarcate the boundary of the Easement Premises or as otherwise provided in the Consent Judgment.
22. The terms 'Grantor' and 'Grantee' wherever used in this Agreement, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and their successors and assigns.

# EXHIBIT C

## LIST OF ATTACHED EXHIBITS

- Exhibit A:** A legal description of the Grantor's property, inclusive of the Easement Premises.
- Exhibit B:** A legal description of the Easement Premises.
- Exhibit C:** A survey map depicting the Easement Premises that also includes identifiable landmarks, such as nearby roads, to clearly identify the easement site.
- Exhibit D:** A legal description that provides a path of legal access to the Easement Premises and a map that indicates this access site that MDEQ staff will use for ingress and egress to and from the Easement Premises; or if the Easement is directly connected to a publicly accessible point, such as a public road, a statement is required that authorizes MDEQ staff ingress and egress to and from the Easement Premises, with a map that clearly indicates the connection of the public access site to the Easement Premises.
- Exhibit E:** *If applicable*, a Cooperative Stewardship Agreement that includes baseline documentation and any vegetation and/or site management plans.

# EXHIBIT C

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written. In signing this Agreement, the Signatory warrants that he or she has the authority to convey the Conservation Easement on behalf of the Grantor.

GRANTOR:

Signature: \_\_\_\_\_

\_\_\_\_\_  
Type/Print Grantor's Name exactly as signed

\_\_\_\_\_  
Title (if signing on behalf of an organization)

\_\_\_\_\_  
Organization Name (if signing on behalf of an organization)

STATE OF MICHIGAN }  
                                  } ss  
COUNTY OF \_\_\_\_\_ }

**IF SIGNING ON BEHALF OF AN ORGANIZATION, THIS MUST BE COMPLETED:**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_, (name(s)) the \_\_\_\_\_, (title)  
of \_\_\_\_\_ (Organization name) a \_\_\_\_\_, (state) corporation,  
partnership, municipality, or limited liability company (circle one), on behalf of the organization.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed name of Notary Public)

My commission is in: \_\_\_\_\_ County, Michigan

Acting in: \_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

**(OR) IF SIGNING AS AN INDIVIDUAL OR MARRIED PERSON, THIS MUST BE COMPLETED:**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by \_\_\_\_\_, (name(s)) \_\_\_\_\_ (marital status).

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed name of Notary Public)

My commission is in: \_\_\_\_\_ County, Michigan

Acting in: \_\_\_\_\_ County, Michigan

My Commission Expires: \_\_\_\_\_

EXHIBIT C

GRANTEE:

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION

\_\_\_\_\_  
William Creal, Chief

STATE OF MICHIGAN)

) ss

COUNTY OF INGHAM)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by William Creal, Chief, Water Resources Division, State of Michigan, on behalf of the Department of  
Environmental Quality.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Typed or Printed name of Notary Public)

Acting in: Ingham County, Michigan

My Commission Expires: \_\_\_\_\_

Form Drafted By:  
The Honorable William Schuette, Attorney General  
Department of Attorney General  
Environment, Natural Resources, and  
Agriculture Division  
P.O. Box 30755  
Lansing, Michigan 48909

AFTER RECORDING, RETURN TO:

Michigan Department of  
Environmental Quality  
Water Resources Division  
Constitution Hall, 2nd Floor South  
P.O. Box 30458  
Lansing, Michigan 48909-7958

(March 13, 2011)