

STATE OF MICHIGAN
IN THE 16TH JUDICIAL CIRCUIT
COUNTY OF MACOMB

THE MICHIGAN DEPARTMENT OF
NATURAL RESOURCES AND
ENVIRONMENT, and Rebecca A.
Humphries, Director of the Michigan
Department of Natural Resources and
Environment.

File No. 10-3789-CE

Honorable Richard L. Caretti

Plaintiffs,

v.

THE CHARTER TOWNSHIP OF SHELBY, a
Michigan Municipal Corporation, Shelby
Soccer City, Inc, and Meram Building Co, Inc.

Defendants.

Tonatzin M. Alfaro Maiz (P36542)
Assistant Attorney General
Attorney for the Plaintiffs
Environment, Natural Resources, and
Agriculture Division
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-7540

Kirk, Huth, Lange & Badalamenti, P.L.C.
Robert S. Huth, Jr. (P42531)
Raechel M. Badalamenti (P64361)
Olivia N. Keuten (P69883)
Attorneys for Charter Township of Shelby
19500 Hall Road, Suite 100
Clinton Township, MI 48038
(586) 412-4900 fax (586) 412-4949

CONSENT JUDGMENT

In the 16th Judicial Circuit Court
in the State of Michigan, on the
_____ day of MAR - 9 2012.

Present: Honorable Richard L. Caretti, Circuit Court Judge

The Michigan Department of Environmental Quality (MDEQ) and the Department of Natural Resources (MDNR) were consolidated into the new Department of Natural Resources and Environment (MDNRE) on January 17, 2010 by Executive Order 2009-45, under Governor

Jennifer M. Granholm. On January 7, 2011, the DNRE was abolished and a newly-created MDEQ became a separate department by Executive Order 2011-2 under Governor Rick Snyder. The MDEQ and the Charter Township of Shelby (Shelby Township), (hereinafter, collectively the Parties) agree that settlement of this action is in the public interest and consent to the entry of this Consent Judgment (“Judgment”), without further litigation, as the most appropriate means of resolving the allegations raised by MDEQ in the Complaint filed July 6, 2010. 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 Shelby Township 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 Shelby Township pursuant to Part 31, Water Resources Protection, MCL 324.3101 *et seq.*, Part 91, Soil Erosion and Sedimentation Control, MCL 324.9101 *et seq.*, and 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 at Shelby Township’s 90-acre parcel of property, located on 23 Mile Road, in Shelby Township, between Ryan and Dequindre Roads that is the subject of the Complaint.

NOW, THEREFORE, before the taking of 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, ADJUDGED AND DECREED:

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 324.30316(1) and Section 605 of the Revised Judicature Act (RJA), MCL 600.605. This Court also has personal jurisdiction over Shelby Township. Shelby Township waives all objections and defenses that it may have with respect to the jurisdiction of the Court.

B. Venue is proper in this circuit pursuant to MCL 324.3115(1), MCL 324.9113(1), and MCL 324.30316.

C. The court determines that the terms and conditions of this 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, MDEQ, is a principal department within the Executive Branch of the State of Michigan pursuant to Executive Order 2011-12. The 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 2011-12.

B. Plaintiff Dan Wyant is the Director of the MDEQ as appointed by Governor Rick Snyder.

C. Defendant Shelby Township is a Charter Township located at 52700 Van Dyke, Shelby Township, Macomb County, Michigan 48316. At all times relevant to this cause of action, Defendant Shelby Township is the title-holder and owner of an approximately 90-acre parcel of property, located on 23 Mile Road, in Shelby Township, between Ryan and Dequindre Roads. The Old Clinton-Kalamazoo Canal transects the parcel and regulated wetlands are present on the parcel. The allegations contained in the Complaint pertain to the 90-acre parcel that is designated in the attached map (See Exhibit A) and herein referred to as the "Property."

D. The provisions of this 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 Defendant Shelby Township shall in any way alter Shelby Township's responsibilities under this Judgment unless expressly agreed to by the MDEQ as an amendment to this Judgment. Shelby Township 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.

E. Shelby Township shall be responsible for providing a copy of relevant portions 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 five calendar days of the effective date of such retention.

F. Notwithstanding the terms of any contract(s) that Shelby Township may enter with respect to the compliance activities to be performed pursuant to this Judgment, Shelby Township is responsible for compliance with the terms of this Judgment and shall ensure that its

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 Shelby Township shall do the following:

1. Prevent unlawful discharges to waters of the state;
2. Assure compliance with Part 31 of the NREPA, including current and future National Pollutant Discharge Elimination System (NPDES) permits issued by the MDEQ to Shelby Township for activities conducted on the Property;
3. Maintain adequate soil erosion and sedimentation controls to ensure that discharges of sediment and/or sediment-laden storm water do not enter into the waters of the state;
4. Ensure that permanent stabilization has occurred in accordance with the Part 91 permit issued by the Macomb County Enforcing Agency and the Permit-By-Rule permit issued by the MDEQ prior to the termination of both permits.
5. Comply with the terms of this Judgment;
6. Pay a civil fine commensurate with the violations alleged in the Complaint and in the future pay stipulated fines as required by this Judgment for failures to meet its obligations, pursuant to Section XIII and Section XIV, respectively.

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, and any reports, plans, specifications and schedules required by this Consent Judgment which, upon approval of the MDEQ, shall be incorporated into and become an enforceable part of this Consent Judgment.
- C. “Land and Water Management” or “LWMD” means the Division of the MDEQ and any successor entities charged with implementing Part 303 of the NREPA.
- D. “Party” means the Plaintiffs (MDEQ or its Director) or Defendant (Charter Township of Shelby). “Parties” means the MDEQ and Shelby Township.
- E. “Permit-By-Rule” means Rule 2190 of Michigan’s Administrative Code, 2005 AACS R323.2190 along with NPDES No. MIR111675 and future NPDES permits authorizing storm water discharges in accordance with the rule.
- F. “Water Resources Division” or “WRD” means the division of the MDEQ and any successor entities charged with implementing Part 31 and Part 91 of the NREPA.
- 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. Shelby Township shall comply with all Part 31 and Part 91 permits that are currently in force as of the effective date of this Judgment. Shelby Township shall comply with all Part 31, Part 91, and Part 303 requirements, including obtaining and maintaining all required permits and seeking permit modification as required under law.

B. With respect to the Property, Shelby Township shall not conduct any activity within wetlands regulated under Part 303 of the NREPA 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. Shelby Township shall comply with the Permit-By-Rule requirements, and in addition to those requirements, shall submit all certified 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.

D. Shelby Township shall implement all activities detailed in the MDEQ approved plan prepared by Anderson, Eckstein and Westrick, Inc., last revised on August 25, 2011, sheets one through seven, attached as Exhibit B. Within 30 days of the effective date of this Judgment, Shelby Township shall submit to the MDEQ a revised construction schedule that details the date, times, and sequence of all the activities pursuant to the attached approved plan provided as Exhibit B.

E. Shelby Township shall schedule a final site review with the MDEQ to verify the site has been permanently stabilized. Once the MDEQ determines the site is permanently stabilized, Shelby Township shall submit a NOT to the MDEQ within 10 days of the final site review as required under the Permit-By-Rule for the storm water coverage.

F. Shelby Township shall restore 1.1 acres of wetlands (Wetland Restoration Area)

on the Property to the wetland conditions that had existed prior to the alleged unauthorized activities. All wetland restoration shall be completed in accordance with the attached approved plan provided as Exhibit B.

G. Shelby Township shall complete the planting and restoration of the Wetland Restoration Area by October 3, 2012. Upon completion of the wetland restoration activities Shelby Township shall provide to the WRD, at the address provided in Section XI written notification of completion of the wetland restoration activities.

H. Shelby Township shall, within 30 days of the effective date of this Judgment, provide to the WRD a conservation easement, in favor of the MDEQ, upon the approximately 1.1 acre Wetland Restoration Area and the approximately 80 acres of remaining wetland on the Property. Shelby Township 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. Shelby Township shall, within 30 days of the effective date of this Judgment, provide a surety bond or irrevocable letter of credit in favor of the MDEQ in the amount of \$35,000.00. The financial assurance required by this paragraph shall be provided using either the Surety Bond or Letter of Credit form provided as Exhibit D of this Judgment, or an instrument that contains the exact language in the MDEQ forms (Exhibit D) without modification.

J. Shelby Township shall be responsible for monitoring the restored wetland for a period of three (3) years following completion of the planting work. An experienced wetland

consultant shall conduct the monitoring. A complete assessment of the wetland's development shall be made annually, and shall be provided to the WRD with annual reports no later than December 31 of each year. Utilizing recognized and established scientific procedures, the annual monitoring report, shall be prepared in accordance with the requirements found in Exhibit E of this Judgment.

K. Should the Wetland Restoration Area 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, Shelby Township shall:

1. Assess the problem(s) and identify the probable causes;
2. Develop reasonable and necessary corrective measures as a revision to the original plan;
3. Reasonable and necessary corrective measures may include, but are not limited to, regarding soils to improve hydrology, reseeding, and/or replanting of wetland plants;
4. Submit a copy of the proposed corrective measures and dates of implementation to the WRD for review and approval (corrective action plan); and
5. Upon WRD approval, implement the corrective measures as specified in the corrective action plan.

L. No later than October 3, 2012, Shelby Township shall have completed all activities under the attached approved plan provided as Exhibit B, including permanent stabilization of the entire Property.

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 Shelby Township's activities, Shelby Township 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, Shelby Township shall take immediate corrective measures to contain any losses of waste, wastewater, or other polluting material to prevent any further discharge or spill to waters of the state.
2. Shelby Township shall immediately upon discovery of any discharge of waste, wastewater, or other polluting material to surface waters of the state notify the WRD Southeast District Office. Emergency notification shall be as follows:
 - a. Monday through Friday, between the hours of 8:00 AM to 5:00 PM, contact the MDEQ WRD Southeast District Office at 586-753-3750.
 - 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, Shelby Township shall provide written notification to the WRD Southeast District Supervisor and the Chief of WRD Enforcement Unit within ten 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 Shelby Township 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

Shelby Township 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 Southeast 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 business days after detection of such violation to both the WRD Southeast 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. Shelby Township shall report any

anticipated violation of this Consent Judgment to the MDEQ, WRD, Southeast District

Supervisor in advance of the relevant deadlines whenever reasonably practicable.

IX. RECORD RETENTION AND ACCESS TO INFORMATION

A. Until five years after the termination of this Judgment, Shelby Township 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 Defendant to create or maintain.

B. Upon MDEQ request, Shelby Township shall provide without cost to the MDEQ copies of all documents and information that this Judgment requires Shelby Township to create or maintain and that are within the possession or control of Shelby Township, its employees, contractors, agents, or representatives. Any documents that this Judgment does not require Shelby Township to create or maintain and not statutorily required to provide and that are within the possession or control of Shelby Township, its employees, contractors, agents, or representatives, shall be provided to MDEQ upon its request and at the reasonable expense of the requesting party. Shelby Township 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 Shelby Township to maintain records or information imposed by applicable laws, regulations, or permits.

X. ACCESS

A. Upon the Effective Date of this Judgment and during any and all construction and monitoring activities, and all other requirements of Shelby Township under this Judgment, but not after their completion, to the extent the property covered by this Judgment is owned, controlled by, or available to Shelby Township 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 evaluation of Shelby Township's compliance with Part 31, Part 91, 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 Defendant, Defendant's 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, 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, and Part 303, of the NREPA.

B. To the extent that the Property, as described in section II.C., where activities are performed by Shelby Township under this Judgment is owned or controlled by persons other than Shelby Township, Shelby Township shall use its best efforts to secure from such persons access for the Parties and their authorized employees, contractors and consultants. Shelby Township 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 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 MDEQ as follows:

1. With respect to the notices, and submittals required by Section VI(D), (F-K)

David Pingel
Resource Enforcement Unit
Water Resources Division
525 West Allegan Street
P.O. Box 30458
Lansing, Michigan 48909-7958

2. For all other notices and submittals required by this Judgment

Hae-Jin Yoon
District Supervisor
Southeast Michigan District Office
27700 Donald Court
Warren, Michigan 48092-2793

and

Barry Selden
Water Enforcement Unit Chief
525 West Allegan Street
P.O. Box 30458
Lansing, Michigan 48909-7958
517-373-6437

For Defendant:

Shelby Township Clerk
52700 Van Dyke
Shelby Township, MI 48316

and

Robert S. Huth, Jr.
Kirk, Huth, Lange
& Badalamenti, PLC
19500 Hall Road, Suite 100
Clinton Township, MI 48038
(586) 412-4900

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. Shelby Township 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 event shall not be deemed a violation of Shelby Township's 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 Shelby Township and for which Shelby Township is 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 Shelby Township that could not have been avoided or overcome through Shelby Township's 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 Shelby Township's action or omission.

C. Shelby Township shall telephone the WRD Southeast District Supervisor within 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 Southeast District Supervisor and Chief of the WRD Enforcement Unit within 10 calendar days and shall describe in detail the delay's anticipated length, the delay's precise cause or causes, the measures that Shelby Township has taken to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Shelby Township shall use all reasonable measures to avoid or minimize any such delay.

D. Shelby Township's 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 Defendant 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 Shelby Township, this may be so stipulated, and the Parties may petition the Court for an appropriate Consent Judgment modification. Shelby Township bears the burden of proving that any delay was beyond its reasonable control, and of showing that it has met the requirements under this section.

F. In the absence of a Force Majeure event, Shelby Township and the MDEQ agree that the WRD Chief may, but in no circumstances is obligated to, grant Shelby Township 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 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 Shelby Township from meeting the deadline.
3. A description of the measures Shelby Township has taken or intends 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 event as well as the WRD Chief's rejection of a request for extension, may be disputed by Shelby Township who shall have the opportunity pursuant to Section XVII to file a motion with the Court.

H. An extension of one compliance date based upon a particular incident does not mean that Shelby Township qualifies 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 CIVIL FINES

A. Shelby Township agrees to pay a civil fine of **\$77,000.00** as full settlement of civil liability arising from past violations of Part 31, Part 91, and Part 303, of the NREPA alleged in the Complaint.

B. Shelby Township shall pay such fine by certified or cashier's checks made payable to the State of Michigan and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157 within 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-1011** on the face of the checks, or in the cover letter with the payments.

XIV. STIPULATED FINES

A. The Parties stipulate to the payment of stipulated fines by Shelby Township 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 stipulated fines as follows:

- a. \$200.00 for the first day of violation;
- b. \$300.00 for the second consecutive day of violation; and
- c. \$500.00 for the third consecutive day of violation and every consecutive day thereafter.

2. Except as provided under Section XIV(1), a failure by Shelby Township to comply with any other provisions of Section VI or any other provision of this Judgment shall result in a stipulated fine of \$250.00 per day, per violation.

B. Shelby Township shall have the opportunity to object to payment of future stipulated fines for failure to meet its obligations under this Consent Judgment by filing a motion with the Court pursuant to Section XVII.

C. All stipulated fines shall be paid within 30 days of Shelby Township's receipt of a demand from the MDEQ, or if Shelby Township disputes the stipulated fines pursuant to Section XVII, within 30 days of an Order of the Court resolving the dispute. Demands for payment shall be sent via certified mail to ensure accuracy regarding the date of receipt. Failure to make any payment required under this Judgment by the specified deadline constitutes a separate violation of this Judgment and is subject to an interest penalty calculated in accordance with Section 600.6013 of the Revised Judicature Act, MCL 600.6013.

D. Shelby Township shall pay all stipulated fines and interest penalties by certified or cashier's check made payable to the State of Michigan and mailed to the Michigan Department of Environmental Quality, Cashier's Office, P.O. Box 30657, Lansing, Michigan 48909-8157. To ensure proper credit, all payments made pursuant to this Consent Judgment

must include the Payment Identification Number *WRD-1011* on the face of the check, or in the cover letter with the payment

E. Shelby Township agrees not to contest the legality of MDEQ's right to assess the stipulated fines or interest penalties in paragraphs A and C of this section, but reserves the right to dispute the factual basis upon which MDEQ demands stipulated fines or interest penalties by filing a motion pursuant to Section XVII.

F. Liability for or payment of stipulated fines under this Judgment shall not preclude the MDEQ from seeking injunctive relief or other relief to which the MDEQ is entitled for Shelby Township's failure to comply with other specific requirements of this Judgment, or failure to comply with Part 31, Part 91, and Part 303, of the NREPA or any other applicable law, except that MDEQ shall not seek additional monetary relief for any violations for which MDEQ has accepted stipulated 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 Shelby Township's 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, and Part 303, of the NREPA or its rules or any amendments thereto.

C. This Judgment does not limit the rights of the Shelby Township or MDEQ against any third parties.

XVI. GENERAL PROVISIONS

A. Severability

Should a court of competent jurisdiction declare any provision of this 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 Shelby Township's 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, and Part 303, of NREPA or its rules or regulations.

D. Settlement

This Judgment is in settlement and satisfaction of all civil claims against Shelby Township alleged by the MDEQ in the Complaint and through the effective date of this

Judgment. MDEQ does hereby agree not to seek civil fines or penalties from Shelby Township for the claims raised in the Complaint, other than those expressly provided for in this Judgment.

XVII. RETENTION OF JURISDICTION

Prior to termination of this Judgment in accordance with Section XVIII, this Court shall retain jurisdiction over this action to modify or enforce the terms of this Judgment, assess disputed stipulated 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 remain in full force and effect until Shelby Township has complied with all of the requirements of this Judgment and MDEQ files a Satisfaction of Judgment pursuant to MCR 2.620. Prior to the filing of a Satisfaction of Judgment, Shelby Township shall submit to the MDEQ a written request to terminate this Judgment. The written request shall include a summary of the activities performed to comply with this Judgment and shall certify that Shelby Township has paid in full the civil fines and stipulated fines owed to the State of Michigan under this Judgment and that Shelby Township is in full compliance with all other provisions of this Judgment. The MDEQ shall determine whether Shelby Township is in full compliance with all the provisions of this Judgment, and if Shelby Township is in full compliance with all such provisions, then the MDEQ shall file a Satisfaction of Judgment pursuant to MCR 2.620. Provided that a written request is made and not reasonably disputed the MDEQ shall not withhold agreement to terminate this Judgment. Shelby Township shall have the opportunity to object to MDEQ's denial of termination pursuant to Section XVII by filing a motion with the Court.

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 SHELBY TOWNSHIP:

CLOSES CASE

By: _____

Dated: _____

By: *RS Huth*
Robert S. Huth, Jr. (P42531)

Dated: *2/23/12*

*Twp Attorney per Act 11
of Twp. Board of Twp. 99*

FOR PLAINTIFFS:

Michigan Department of Environmental
Quality

By: *Dan Wyant*
Dan Wyant, Director

Dated: *3-5-12*

By: *Tonatzin M. Alfaro Maiz*
Tonatzin M. Alfaro Maiz, P36642
Assistant Attorney General

Dated: *3-6-12*

IT IS SO ORDERED, ADJUDGED AND DECREED THIS ___ day of _____,
2012.

MAR - 9 2012

RICHARD L. CARETTI

Honorable Richard L. Caretti
Circuit Court Judge

A TRUE COPY
Carmella Sabaugh
COUNTY CLERK

BY *[Signature]*
DEPUTY CLERK

EXHIBIT A

Macomb Soccer City

Shelby Township

Imagery Acquisition Date:
07/04/2010



LEGAL DESCRIPTION

SECS 18 & 19; BEG AT S 1/4 COR SEC 18; TH S ALG N-S 1/4 LINE SEC 19 TO NELY LINE OF CONRAIL R.R.; TH NWLY ALG SD LINE TO W LINE SEC 18; TH N ALG SD W SEC LINE SEC 18 TO C/L OLD CLINTON KALAMAZOO CANAL; TH E'LY 250.9 FT ALG SD C/L CANAL; TH N 430 FT TO C/L 23 MILE RD; TH S84°-51'48"E ALG SD C/L TO A PT 1353.54 FT N84°51'48"W FROM N-S 1/4 LINE SEC 18; TH CONT S84°51'48"E 187.03 FT & ALG A CURVE TO R 1321.96 FT; RAD= 1152.77 FT & S19°09'30"E 203.76 FT ALG SD C/L 23 MILE RD AS RELOCATED; TH N0°37'02"E 866.89 FT; TH S84°51'48"E 100.30 FT TO N-S 1/4 LINE SEC 18; TH S0°37'02"W 1780.0 FT ALG SD 1/4 LINE TO POB; ALSO COM AT SW COR SEC 18; TH N89°-41'18"E 669.54 FT ALG S SEC LINE TO POB; TH N 319.75 FT; TH N65°23'W 119.80 FT; TH S85° 10'W 322.79 FT; TH N 802.22 FT TO SWLY LINE OF CONRAIL R.R.; TH SELY ALG SD LINE TO S LINE SEC 18; TH S89°41'18"W 515.98 FT ALG S SEC LINE; TH N 105.84 FT; TH N80°22'W 570.03 FT; TH S 204.29 FT; TH S89°41'18"W 301.77 FT ALG S LINE SEC 18 TO POB. 90.506 A.



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, MDEQ file number ____-____-____-V, (Consent Judgment ____/____/20__), Grantor has agreed to grant the MDEQ a Conservation Easement that protects the wetland restoration site and 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 entered 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;
 - 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 Agreement 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 Agreement 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.
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 entered by Grantee, 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.

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.

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)

Exhibit D

LETTER OF CREDIT

Michigan Department of Environmental Quality
c/o Water Resources Division
Administration Section, Finance Unit
525 West Allegan, 2nd Floor South
Lansing, Michigan 48933

Michigan Department of Environmental Quality:

We, _____, as the Surety, hereby issue our irrevocable Letter of Credit number _____ in favor of the Michigan Department of Environmental Quality (MDEQ) on behalf of the Charter Township of Shelby, hereby referred to as the Principal, for a sum of up to an aggregate amount not to exceed Thirty-five Thousand and 00/100 (\$35,000.00), available by your drafts at sight drawn on our institution, _____, located at _____. Drafts must be marked "Drawn under _____ Letter of Credit number _____ dated _____. We are a bank or financial institution that has the authority to issue Letters of Credit in the state of Michigan.

This Letter of Credit is to provide financial assurance to the Michigan Department of Environmental Quality (MDEQ-WRD) for the conditions specified in the Consent Judgment 10-3789-CE (Judgment) where the Principal is required to establish a wetland mitigation area that is within the state of Michigan in accordance with the provisions of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 303), and the administrative rules promulgated thereunder.

The MDEQ-WRD may draw on this Letter of Credit in the event, in accordance with the provisions of Part 303, and the administrative rules promulgated thereunder, a Violation Notice is issued or other order indicating that the Principal has failed to comply with the wetland mitigation requirements of the Judgment. These funds shall allow the MDEQ to construct and monitor the required wetland mitigation or initiate corrective actions to complete the mitigation in accordance with the terms and conditions of the Judgment.

Should the MDEQ-WRD determine that completion of the approved wetland mitigation plan is not feasible or is impractical, the MDEQ-WRD reserves the right to use the funds to implement wetland mitigation through any of the following options; (1) acquisition of approved credits from a wetland mitigation bank, established under R 281.951 *et seq.*, (2) restoration of previously existing wetlands, (3) creation of new wetlands, or (4) preservation of existing wetlands at an alternative location.

Partial drawings are permitted. This original Letter of Credit must be submitted to us together with any drawings hereunder for our endorsement of any payments effected by us and/or for cancellation.

This Letter of Credit shall be, and continue to be, in force for a minimum of one (1) year, but such expiration date shall be automatically extended for periods of one year, unless, not less than 90 days before the current expiration date, we notify both the MDEQ-WRD and the Principal by certified mail of our decision not to extend the current expiration date. We agree that the 90-day period shall begin on the date when both you and the Principal have received the notice, as evidenced by the return receipts. If the Principal does not extend the expiration date or establish alternative financial assurance within 30 days after receipt of an expiration or cancellation notice by the Surety, the MDEQ-WRD may draw on the Letter of Credit. The Principal is not authorized to cancel the Letter of Credit without written approval from the MDEQ-WRD.

This Letter of Credit is subject to the Uniform Customs and Practices for Documentary Credits, 2007 Revisions, International Chamber of Commerce, Publication No. 600, and the Uniform Commercial Code, where applicable. Where conflicts exist between Uniform Customs and Practices for Documentary Credits and the Michigan Uniform Commercial Code, the Michigan Uniform Commercial Code shall control.

We shall honor drafts drawn under and in compliance with the terms of this Letter of Credit and these drafts will be duly honored upon presentation to us if presented on or before _____, or any automatically extended date. The amount of each draft must be endorsed by us on the reverse of this Letter of Credit.

We certify that the wording on this Letter of Credit is identical to the wording provided by the MDEQ-WRD as of the date shown immediately below.

Institution

Address

City, State

Signature

Printed name

Date

Phone

Exhibit D

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

SURETY BOND FOR A MITIGATION SITE

By authority of Part 303, 1994 PA 451, as amended

Principal Name: Charter Township of Shelby	Bond Number:
Consent Judgment 10-3789-CE	
Principal Address: 52700 VanDyke	County: Macomb
City: Shelby Township, Michigan	Zip Code: 48316

Charter Township of Shelby, as Principal, and _____ an insurer licensed to do business in the State of Michigan (the "Surety"), are firmly bound unto the Michigan Department of Environmental Quality (MDEQ) for the sum of Thirty-five Thousand and 00/100 (\$35,000.00), lawful money of the United States of America, for the payment of which we bind ourselves, our executors, administrators and heirs, successors and assigns, jointly and severally.

Sealed with our seals, dated the ___ day of _____, ____.

WHEREAS, the Principal, as a condition of the Consent Judgment 10-3789-CE (Judgment), is required to establish a wetland mitigation area that is within the State of Michigan and that is in accordance with the provisions of Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 303), and the administrative rules promulgated thereunder. The Principal is required by law to provide, as part of the Judgment, a Surety Bond to guarantee compliance with conditions specified within the aforementioned Judgment.

NOW, THEREFORE, the conditions of this obligation are such that in the event that the Michigan Department of Environmental Quality-Water Resources Division (MDEQ-WRD), in accordance with the provisions of Part 303, and the administrative rules promulgated thereunder, issues a violation notice or other order indicating that the Principal has failed to comply with the requirements of the Judgment, the MDEQ-WRD shall have recourse to the rights created under this Surety Bond. The Principal shall perform the wetland mitigation as required by the Judgment, take corrective action in accordance with the violation notice or order of the MDEQ-WRD, or the Surety shall make payment guaranteed by this Surety Bond. These funds shall allow the MDEQ-WRD to construct and monitor the required wetland mitigation or initiate corrective actions to complete the mitigation in accordance with the terms and conditions of the Judgment.

Should the MDEQ-WRD determine that completion of the approved wetland mitigation plan is not feasible or is impractical, the MDEQ-WRD reserves the right to use the funds to implement wetland mitigation through any of the following options; (1) acquisition of approved credits from a wetland mitigation bank, established under R 281.951 *et seq.*, (2) restoration of previously existing wetlands, (3) creation of new wetlands, or (4) preservation of existing wetlands at an alternative location.

Partial drawings are permitted. This original bond must be submitted to us together with any drawings hereunder for our endorsement of any payments by us and/or for cancellation.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal

sum of the Surety Bond, but in no event shall the obligation of the Surety hereunder exceed the amount of said penal sum.

The Surety Bond shall be, and continue to be, in force for a minimum of one (1) year, but such expiration date shall be automatically extended for periods of one year, unless, not less than 90 days before the current expiration date, we notify both the MDEQ-WRD and the Principal by certified mail of our decision not to extend the current expiration date. We agree that the 90-day period shall begin on the date when both you and the Principal have received the notice, as evidenced by the return receipts. If the Principal does not extend the expiration date of the Surety Bond or establish alternate financial assurance within 30 days after receipt of an expiration or cancellation notice by the Surety, the MDEQ-WRD may draw on the Surety Bond.

The Principal may terminate this Surety Bond by sending written notice to the Surety, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the Surety Bond from the MDEQ-WRD.

We certify that we, the Surety company issuing the Bond, at a minimum, are among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of Treasury.

The following signatures certify that we are authorized to execute this Surety Bond on behalf of the Principal and the Surety and that the wording of this Surety Bond is identical to the wording provided by the MDEQ-WRD, as of the date shown immediately below.

IN WITNESS WHEREOF, we, the Principal and the Surety, have executed this Surety Bond, affixed our seals, and attached the justification or power of attorney as of the day and date first above written.

Principal

By: _____

Surety

By: _____

Authorized Agent and Attorney in Fact

Address of Surety

Phone Number

Date

When completed, send the original bond to:

State of Michigan
Michigan Department of Environmental Quality
c/o: Water Resources Division, Administration Section, Finance Unit
525 West Allegan, 2nd Floor South
Lansing, Michigan 48933

EXHIBIT E

WETLAND RESTORATION REPORT REQUIREMENTS

The permittee shall monitor the wetland restoration for a minimum of 3 years. A monitoring report, which compiles and summarizes all data collected during the monitoring period, shall be submitted annually by the Charter Township of Shelby. The Charter Township of Shelby 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 5 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.
- 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 one-time photographic documentation during construction of the placement of at least six (6) inches of high quality soil, from the A horizon of an organic or loamy surface texture soil, across the site.
- h. Provide the number and type of habitat structures placed and representative photographs of each structure type.
- i. 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.
- j. 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 reserves the right to reject reports with substandard monitoring data.

The 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.