

**United States District Court**  
Western District of Michigan  
Southern Division

**Singapore Dunes, L.L.C.**,  
a Michigan limited liability company,  
Plaintiff,

Case No. 1:10 – cv – 00210 – PLM

vs.

Chief Judge Paul L. Maloney

**Saugatuck Township**,  
a Michigan township,  
Defendant.

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**Plaintiff's Motion for Entry of  
Consent Judgment and Final Order**

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Plaintiff Singapore Dunes, L.L.C. files this Motion for Entry of Consent Judgment and Final Order and states in support as follows:

1. This is an action under 42 U.S.C. § 1983 relating to the adoption and terms of a zoning ordinance in Saugatuck Township.
2. The parties have negotiated a settlement agreement that resolves all of the claims in this action. The settlement agreement provides for the entry of a consent judgment and final order in the form attached to this motion as Exhibit 1 (the *Consent Judgment*).
3. As set forth in the accompanying memorandum, the Consent Judgment is the product of good faith negotiations, is a lawful exercise of the Township's power

to resolve claims against it, and is a fair, adequate, and reasonable resolution of the parties' dispute.

4. Pursuant to L. Civ. R. 7.1(d), undersigned counsel advises that Defendants concur in the relief requested herein. Plaintiff is advised that Defendants will separately file a joinder to this motion, supporting entry of the Consent Judgment.

### **Relief Requested**

For the reasons set forth above, Plaintiff respectfully requests that this Court grant this motion and enter the Consent Judgment in the form attached.

Dated: July 26, 2011

/s/ James R. Bruinsma  
One of the attorneys for Singapore  
Dunes, L.L.C.

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**Exhibit 1 to Motion for Entry of Consent  
Judgment and Final Order**

**Consent Judgment and Final Order**

**United States District Court**  
Western District of Michigan  
Southern Division

**Singapore Dunes, L.L.C.**,  
a Michigan limited liability company,  
Plaintiff,

Case No. 1:10 – cv – 00210 – PLM

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**Saugatuck Township**,  
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**Consent Judgment and Final Order**

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**Introduction**

Plaintiff Singapore Dunes, L.L.C. (*Singapore Dunes*) initiated this action against Defendant Saugatuck Township (the *Township*) and the individual members of the Township Board, solely in their representative capacities (collectively, the *Individual Defendants*), seeking declaratory and injunctive relief, including a declaration that the Township’s Ordinance Number 2006-02, § 19, known as “R–4 Lakeshore Open Space Zoned District” (the *R–4 amendment*), is void *ab initio* and unenforceable, and costs and attorney fees as provided by federal and state law.

This Court has jurisdiction over this matter under 28 U.S.C. § 1331 and 42 U.S.C. § 1983, and supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

Singapore Dunes is the owner of the real property in the Township described in Exhibit A (*Plaintiff’s Property*) and depicted on Exhibit B.

Singapore Dunes alleges that the Township engaged in conduct in violation of the due process and equal protection guarantees of the United States Constitution, as well as related counterparts under state law.

Among other things, Singapore Dunes alleges that the R–4 amendment was adopted without proper notice, that it contains illegal “spot-zoning” provisions that impermissibly affect approximately 207 acres of Plaintiff’s Property having frontage on Lake Michigan and the north side of the Kalamazoo River and the Kalamazoo River Channel, and that the Township failed and refused to administer its zoning requirements as to such property fairly and without bias.

If Singapore Dunes were to prevail on its claims, the resulting relief would include, among other things, (i) restoration of density limits under prior zoning classifications, allowing up to three times as many dwelling units as under the R-4 amendment; (ii) restoration of a range of uses as of right and special approval uses that were allowed under prior zoning classifications; and (iii) recovery of attorney fees and costs incurred in bringing this litigation.

The Township denies the material allegations of Singapore Dunes’ complaint, contends that the zoning requirements at issue in the complaint comport with the United States Constitution and all requirements of state law, and denies that Singapore Dunes is entitled to any relief in this matter.

By separate stipulation of the parties and Order of the Court, the claims in this action as to the Individual Defendants have been dismissed with prejudice.

To avoid the burden, expense, and uncertainty of further litigation, after consultation with their respective legal counsel and extensive negotiations, the parties have agreed to compromise their respective positions and to fully and finally resolve their dispute on the terms and conditions set forth in the Settlement Agreement among the parties (the *Settlement Agreement*) effective as of the date of this Consent Judgment and Final Order (*Consent Judgment*); and the parties have stipulated to the entry of this Consent Judgment.

The Township has the legal power and authority to execute and deliver the Settlement Agreement, and has determined that the terms and conditions of the Settlement Agreement and the Consent Judgment are fair, just, reasonable; that they properly balance the conservation of natural resources with private property rights by allowing for a mix of land uses, preservation of open space, and compact development design; that they constitute a compromise of the rights that Singapore Dunes would retain if the R–4

amendment were invalidated; and that they are otherwise in the interest of the public health, safety, and general welfare.

Singapore Dunes has the legal power and authority to execute and deliver the Settlement Agreement, and has determined that the terms and conditions of the Settlement Agreement and the Consent Judgment are fair, just, reasonable, and in Singapore Dunes' interest.

The Court has reviewed the written submissions made by the parties and the arguments of counsel, and finds that the Consent Judgment is fair, adequate, and reasonable. Accordingly, it is hereby AGREED, ORDERED, and ADJUDGED as follows:

### **Terms of Consent Judgment**

#### **1. Parties and Property Bound; Recordation.**

a) This Consent Judgment shall be binding upon, and shall inure to the benefit of, the parties and, subject to subparagraph 1(b), their respective successors and assigns, and all other persons now or hereafter having an interest in all or any part of Plaintiff's Property, and shall run with Plaintiff's Property.

b) In connection with any transfer of any interest(s) in all or any part of Plaintiff's Property, the parties to the transfer may agree that provisions of this Consent Judgment that otherwise would run with the transferred interest(s) and property, and be enforceable by the transferee of such interest(s) and property, shall not inure to the benefit of or be enforceable by such transferee or such transferee's successors or assigns. No such agreement shall impair or otherwise affect the enforceability of such provisions as to any other interests in or portions of Plaintiff's Property. No such agreement shall affect the ability of the Township to enforce this Consent Judgment relative to Plaintiff's Property.

c) The Allegan County Register of Deeds shall record a true copy of this Consent Judgment in the Allegan County real property records upon payment of the lawful recording fees. All such recording fees shall be paid by Singapore Dunes.

#### **2. Permitted Uses.**

a) Exhibit B delineates Plaintiff's Property into Zone A, Zone A1, Zone B (part of which is identified as the Marina District), Zone C, Zone D, Zone E,

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Zone F, and Zone G, and lists Permitted Uses within each such zone. For each zone delineated on Exhibit B, the *Permitted Uses* include all uses listed as Permitted Uses in Exhibit B, all uses within each such zone permitted by the Township zoning ordinance (being Chapter 40 of the Township's Code of Ordinances) or Applicable Law, as defined in paragraph 5, and all of the following:

- i. Home occupations, subject to the Township zoning ordinance.
- ii. Parks and recreation areas, improved and unimproved walks and trails for pedestrian and equine use, pastures, fencing, natural areas, wildlife management operations, community gardens, small agricultural uses in non-critical dune areas, and forest preserves.
- iii. Public and private water wells and lines, storm water detention, retention, and drainage facilities, sanitary sewer and sewage treatment facilities, other public and private utilities designed to serve the owners and occupants of the single-family residences and multi-family residences situated on Plaintiff's Property and the owners, occupants, customers, patrons, guests, and users of any Hotel, Marina, and other improvements and facilities located within Plaintiff's Property.
- iv. Gatehouses, security systems, perimeter fencing along State of Michigan land and public road boundaries.
- v. Public or private roads, streets, driveways, sidewalks, paved and unpaved pathways, and parking areas intended to serve the owners and occupants of the single-family residences and multi-family residences situated on Plaintiff's Property and the occupants, customers, patrons, guests, and users of any Hotel, Marina, and other improvements and facilities located within Plaintiff's Property (such facilities are collectively referred to below as *Streets, Walks, and Parking Areas*).
- vi. Mobile homes and other temporary structures used in connection with the construction of Permitted Uses and Special Approval Uses, but such mobile homes and other temporary structures shall be removed promptly upon completion of the improvements in connection with which they were used.
- vii. Garages, carports, accessory buildings, and structures incidental to any of the Permitted Uses, subject to the Township zoning ordinance.

- viii. Tennis courts, ball fields, bicycle paths, horse paths, walking paths, skeet and trap ranges, gazebos, observation platforms and towers, and other recreational facilities not described in any other provision of this paragraph.
- ix. Buildings for off-season storage of small watercraft, snowmobiles, motorcycles, motor scooters, and other motorized and non-motorized recreational vehicles, and trailers for such vehicles. These buildings shall be located in Zone F or in the Marina District in Zone B.
- x. Manager and staff housing, management offices, and other uses customarily incidental to the Permitted Uses or Special Approval Uses.

b) All Permitted Uses shall be permitted as of right, subject only to the restrictions and limitations set forth in this Consent Judgment and to site plan review by the Township Planning Commission as provided in paragraph 4.

c) References in Exhibit B to the “Hotel” mean a facility consisting of up to 25 suites for overnight occupancy (each suite may be divided into two units, for a total of not more than 50 units for overnight occupancy), and which may include common areas, meeting rooms, space for food and alcoholic and non-alcoholic beverage service, fitness and spa, chandlery and general retail space, and space for operation, service, and maintenance of the facility, in proportion to the number of guest units or suites it contains. Singapore Dunes shall have the option at any time to relinquish its right to construct the Hotel. If Singapore Dunes relinquishes its right to construct the Hotel, the total number of residential dwellings on Plaintiff’s Property automatically shall be increased as provided in paragraph 5.

d) References in Exhibit B to “Limited Retail/Hospitality” mean limited retail, hospitality (including food and alcoholic and non-alcoholic beverage service), and commercial structures and facilities designed primarily to serve the owners and occupants of residences situated on Plaintiff’s Property and their guests, as well as the occupants, customers, patrons, guests, and users of the Hotel, the Marina, and any other facilities and land located within Plaintiff’s Property.

e) References in Exhibit B to the “Marina” mean a facility consisting of a maximum of 66 boat slips (not less than 33 of which shall be restricted in use to owners and occupants of residential dwellings situated on Plaintiff’s Property and up to 33 of which may be designated for use by the general public on a seasonal or short-term rental basis), and which may include such docks,



piers, utilities, pump-out facilities, boat fueling facilities, restrooms, showers, clothes washing and drying equipment, marine-related retail and repair space, small boat storage, mechanics shop, boat launches, boats lifts, and boat storage areas, and such other improvements and facilities as are customary incidents of marinas of comparable size that are connected by water to Lake Michigan.

f) The existing residential structure located in Zone A1 is permitted as a community building for the use and enjoyment of the owners and occupants of the residences situated on Plaintiff's Property and their guests, or as a single-family residence. As of the date of this Consent Judgment, such existing structure is being used as a single-family residence. Before changing the use of such existing structure to a community building, Singapore Dunes shall so advise the Township in writing, and the use of such structure shall not thereafter be changed without written consent from the Township, which shall not be unreasonably withheld or delayed.

**3. Special Approval Uses.** Additional uses (each, a *Special Approval Use*) of Plaintiff's Property may be made upon application to and approval of the Township Planning Commission in accordance with Article VI of the Township zoning ordinance; except that the Township acknowledges that it has conclusively determined that the general character and nature of the Special Approval Uses listed below can be designed, constructed, operated and maintained in a manner which satisfies the standards set forth in Section 40-693(b) of the Township zoning ordinance. An applicant for a Special Approval Use shall be given an opportunity to appear before the Township Planning Commission and submit evidence in support of its application. The Township shall not apply its standards for granting Special Approval Uses in a manner that discriminates against Plaintiff's Property. The Planning Commission's findings and reasons for rejection of an application for a Special Approval Use shall be stated in writing and shall be based upon competent, material, and substantial evidence on the record as a whole. The Special Approval Uses for each zone delineated on Exhibit B include the following:

a) Community buildings and structures (other than the building located in Zone A1 identified on Exhibit B) intended for the use and enjoyment of the owners and occupants of the residences situated on Plaintiff's Property and their guests.

b) A 9-hole, walking-only, environmentally-sensitive private golf course without pathways for motorized golf carts, with membership restricted to owners and occupants of the residences on Plaintiff's Property and use restricted to members, residents, their guests, and guests of the Hotel.

c) Horse stables, horse riding arenas, and paddocks.

d) Other improvements designated as Special Approval Uses on Exhibit B.

**4. Site Plan Review.** All Permitted Uses and all Special Approval Uses, except single family residences to be constructed outside that portion of Plaintiff's Property that, as of the date of this Consent Judgment, is in the R-4 Lakeshore Open Space Zone, shall be subject to site plan review by the Township Planning Commission in accordance with Section 40-816 of the Township zoning ordinance. Because of the regulatory authority of the State of Michigan Department of Environmental Quality over natural resource features, Subsections (1), (2) and (3) of Section 40-816(b) of the Township zoning ordinance shall not be used to deny approval of any site plan submitted for a Permitted Use or a Special Approval Use on Plaintiff's Property, nor shall any tree or vegetation survey, map, inventory, or similar document be required in connection with any application for site plan approval. Conditional approval with reasonable modifications shall not necessarily be deemed a denial. With respect to any site plan review involving Subsections (4) and (5) of Section 40-816(b) of the Township zoning ordinance, the Township Planning Commission shall consider and accept written approval by the County Drain Commissioner of any drainage plan. The Tree Protection Zone established under Section 40-1113(d) of the Township zoning ordinance shall not be used to deny approval of any site plan submitted for a Permitted Use or a Special Approval Use on Plaintiff's Property, although such approval could be conditioned on compliance with reasonable tree planting requirements and other requirements of Article XIX of the Township zoning ordinance. The Township shall not apply its site plan approval standards in a manner that discriminates against Plaintiff's Property. The Planning Commission's findings and reasons for rejection or conditional approval of an application for site plan approval shall be stated in writing and shall be based upon competent, material, and substantial evidence on the record as a whole. The same procedures and standards of this Consent Judgment that govern initial site plan review shall apply to review of applications for approval of amendments to previously-approved site plans.

**5. Location of Permitted Uses and Special Approval Uses.** Unless otherwise prohibited by federal or state statutes or regulations promulgated pursuant to such statutes, all as amended from time to time (collectively, *Applicable Law*), the only restrictions on the areas of Plaintiff's Property in which Permitted Uses and Special Approval Uses may be located are the following:

a) Only detached single-family residences (*single-family residences*) may be constructed in Zone A, and a maximum of 8 single-family residences may be constructed in Zone A.

b) No more than a total of 67 single-family residences and multi-family residences (*multi-family residences* are residences designed for separate ownership and occupancy located in a building containing two or more residences), in any combination, may be constructed in Zone B (except that if Singapore Dunes relinquishes its right to construct the Hotel, as provided in subparagraph 2(c), the total number of single-family residences and multi-family residences that may be constructed in Zone B automatically shall be increased from 67 to 82).

c) The total number of single-family residences or multi-family residences constructed within any zone delineated on Exhibit B shall not exceed the number of such residences specified on Exhibit B, except as provided in subparagraphs 5(b) and 5(d).

d) The total number of single-family residences and multi-family residences constructed on Plaintiff's Property shall not exceed 100 (except that if Singapore Dunes relinquishes its right to construct the Hotel, as provided in subparagraph 2(c), the total number of single-family residences and multi-family residences that may be constructed on Plaintiff's Property automatically shall be increased from 100 to 115).

e) Buildings containing more than four multi-family residences may be constructed only in the Marina District of Zone B.

f) No buildings or other above-grade structures, other than the Marina, the River Docks, utilities, a gazebo, canopies, and Streets, Walks, and Parking Areas, may be constructed anywhere in the area that is within 50 feet of the edge of the Kalamazoo River.

Subject to obtaining site plan approval in accordance with paragraph 4, the structures and improvements for the Permitted Uses and Special Approval Uses listed in Exhibit B or this Consent Judgment may be located anywhere within each respective zone shown on Exhibit B (or in the overlay district that includes such zone) that is not prohibited by the Township zoning ordinance, as modified by this Consent Judgment, or Applicable Law.

The number of single-family residences and multi-family residences that may be constructed on Plaintiff's Property or within any zone delineated in Exhibit B excludes all manager and staff housing on Plaintiff's Property (which shall

not exceed housing for more than 20 persons), the existing residential structure in Zone A1, and all guest units/suites in the Hotel.

Singapore Dunes may transfer part of Plaintiff's Property, containing approximately 80 acres and configured approximately as shown on Exhibit C, to the State of Michigan (or a department, authority, or agency of the State of Michigan), and no such transfer shall reduce or otherwise affect the total number of single-family residences or multi-family residences that may be constructed on the remaining property within any zone delineated on Exhibit B.

## **6. Roads, Paths, and Utilities.**

a) Roads, paths, and utilities may be located anywhere on Plaintiff's Property that is not prohibited by the Township zoning ordinance, as modified by this Consent Judgment, or Applicable Law. Where practical, shared drives, private roads, and utility easements and access routes shall be used. One shared driveway may support up to four single-family homes when the access routes to buildable sites are challenged by slopes. Roads will be designed to a maximum improved surface width of 20 feet in areas identified as critical dunes. Road building standards and materials shall be consistent with standards of the American Association of State Highway and Transportation Officials - Geometric Design of Highways and Streets, 2004 and Design of Pavement Structures, 1953, as amended or superseded, and Applicable Law.

b) Existing roads and driveways on Plaintiff's Property as of the date of this Consent Judgment may continue to be used and maintained in their present location and condition; provided, however, that if an existing road is used to access a principal building constructed on Plaintiff's Property after the date of this Consent Judgment, the Township may require the affected road or road segment to be brought into compliance with the requirements of the Township zoning ordinance, as modified by this Consent Judgment.

c) Beach grass (*Ammophila breviligulata*) or other suitable or similar vegetation material shall be planted on areas of open sand for a distance of not less than 50 feet on each side of private roads, streets, and driveways constructed after the date of this Consent Judgment.

d) Pathways created on Plaintiff's Property after the date of this Consent Judgment shall, to the extent practical, be sited in the troughs, valleys, historic trail routes, and natural gaps of the dunes, and any such pathways may be designated for use by pedestrians, horses, and motorized

vehicles not requiring a license. Pathways existing on Plaintiff's Property as of the date of this Consent Judgment by reason of historic or current use also may be designated for use by pedestrians, horses, and motorized vehicles not requiring a license.

**7. Parking.** The minimum parking space and loading and unloading area requirements for the Permitted Uses and Special Approval Uses shall be established by the Township zoning ordinance, as modified by this Consent Judgment. Parking spaces and loading and unloading areas may but need not necessarily be located within the same lot or parcel as the Permitted Uses or Special Approval Uses for which they are created, if approved by the Township pursuant to site plan or Special Approval Use review as provided in paragraphs 3 and 4. Parking spaces and loading and unloading zones meeting or exceeding the minimum requirements for the Permitted Uses and Special Approval Uses may be located or clustered anywhere on Plaintiff's Property where not prohibited by Applicable Law, if approved by the Township pursuant to site plan or Special Approval Use review as provided in paragraphs 3 and 4.

**8. Certain Design Limitations.**

a) No building, other than the Hotel and buildings containing more than four multi-family residences, shall be more than 45 feet above grade level. The Hotel, and all buildings containing more than four multi-family residences, shall be constructed only in the Marina District of Zone B. Buildings containing more than four residential dwellings shall not exceed 64 feet above grade level. One-third of the total area of the building footprint occupied by the Hotel shall not be more than 90 feet above grade level, and the remainder of the total area of the building footprint occupied by the Hotel shall not be more than 64 feet above grade level. All building height limitations set forth in this paragraph shall be measured from grade level at its highest point to the mid-point of the roof of the building in question. Chimneys, elevator bulkheads, cupolas, spires, rooftop housing for mechanical equipment, and water towers shall be permitted to exceed the height limitations in this paragraph to the extent required to effectively operate.

b) One-story single-family residences shall have a minimum area of 750 square feet, exclusive of open porches, breezeways, terraces, garages, and exterior stairways.

c) The exterior sidewalls of all dwelling units shall not be less than 16 feet in width.

d) Single-family residences located on any portion of Plaintiff's Property (other than the existing residential structure located on Zone A1) shall be located only on a platted lot, a site condominium unit, or an otherwise legally existing parcel.

e) The dimensions of all pump houses on Plaintiff's Property shall be as approved by the Michigan Department of Environmental Quality or such other governmental agency as may be specified by Applicable Law.

f) There shall be no limitations on the design and appearance of buildings, structures, and improvements located on Plaintiff's Property other than as provided by Applicable Law or the Township zoning ordinance, as modified by this Consent Judgment.

g) Except as otherwise specifically provided in this Consent Judgment, all development of Plaintiff's Property shall comply with applicable requirements of the Township zoning ordinance.

#### **9. Storm Drainage.**

a) Storm water shall be substantially managed with green infrastructure, such as vegetated swales, rain gardens, stone weirs or dikes, sediment basins and shallow storm water areas. Storm water shall be minimally managed with conventional storm water management structures such as gutters, catch basins, underground pipes, detention ponds, and retention ponds. Where feasible, underground detention facilities may be permitted.

b) Reasonable measures shall be taken to prevent roadway and parking lot oil and gas residues and other pollutants from being discharged to the natural drainage systems.

c) Storm water detention ponds shall be required if necessary for the containment of estimated surface water runoff. Such ponds shall be placed at locations that will not detract from visual amenities along the streetscape or result in a hazard to pedestrians in the immediate area.

d) All applicable requirements of the County Drain Commissioner and Applicable Law must be satisfied.

**10. Water and Sanitary Sewer.** Improvements on Plaintiff's Property shall be served by public water and public sanitary sewer, or by a private water system or a private sanitary sewer or septic system, subject only to such



approvals as may be required by Applicable Law; if Plaintiff's Property is served by public water or public sanitary sewer, such public system(s) shall comply with the Township of Saugatuck Code. The Township does not guarantee that it will have capacity to offer public water services or public sanitary sewer services to Plaintiff's Property.

**11. Subdivisions, Condominiums, and Other Land Divisions.** One or more condominium projects and platted subdivisions may be established on such part or parts of Plaintiff's Property as Singapore Dunes may determine, and existing parcels within Plaintiff's Property otherwise may be divided, subdivided, and split, upon compliance with the Michigan Land Division Act, the Michigan Condominium Act, and other Applicable Law. Except for single family residences to be constructed outside that portion of Plaintiff's Property that, as of the date of this Consent Judgment, is in the R-4 Lakeshore Open Space Zone, the provisions of the Township zoning ordinance governing the minimum area of platted lots and site condominium units established within Plaintiff's Property, and the maximum percentage of such lots and condominium units that may be covered by buildings, structures, and improvements constructed within their boundaries, shall not apply to Plaintiff's Property. To the extent that Applicable Law requires Township approval of the establishment of any site condominium project or subdivision, such approval shall be deemed to have been granted upon Township approval of the site plan for the part of Plaintiff's Property that is included in such condominium project or subdivision, as provided in paragraph 4. The Township shall not unreasonably withhold, delay, or condition its approval of any request to divide, subdivide, or split any parcel within Plaintiff's Property.

**12. Household Pets; Other Animals.** Household pets may be brought and maintained anywhere on Plaintiff's Property in accordance with the Township zoning ordinance so long as they: are not kept or bred for commercial purposes; are under such care and restraint as to not pose a threat to the public health and safety; and are not a nuisance or annoyance to the owners and occupants of Plaintiff's Property or their invitees or guests. Horses are permitted on Plaintiff's Property so long as they are confined to those areas of Plaintiff's Property that are approved for use by horses. No fowl, poultry, farm animals other than horses, or wild animals, or animals that are illegal to own as household pets, may be brought or maintained anywhere on Plaintiff's Property.

**13. Access from Public Road.** Due to slope constraints affecting Plaintiff's Property, the critical dune area established by Applicable Law, and the low density of development permitted by this Consent Judgment, only one

access road to Plaintiff's Property shall be required from an adjacent public road. Except for the single access road standard set forth above, the road system within Plaintiff's Property shall be designed and constructed in accordance with the 2006 International Fire Code, as amended or superseded, and the requirements of paragraph 6(a). At the time or times of site plan approval for development within Plaintiff's Property, the Township may impose additional reasonable safety requirements, such as a standpipe system or the equivalent for emergency water needs, the use of sprinkler systems in buildings containing more than four multi-family residences, the designation of a space along the Kalamazoo River adjacent to Plaintiff's Property for the exclusive use of a fireboat, or the designation of a landing area for helicopters.

**14. Anchoring of Watercraft; Existing Improvements.** Watercraft may be anchored upon any stream or body of water adjacent to Plaintiff's Property as long as such anchoring does not unreasonably interfere with the navigation of other watercraft upon such body of water, and if allowed by Applicable Law and the Township zoning ordinance, as modified by this Consent Judgment. Mooring buoys and the use of temporary or permanent mooring or anchoring devices other than anchors carried on the watercraft to be temporarily secured (that is secured otherwise than at a seawall, bulkhead or similar structure) are prohibited. Existing boardwalks, boat lifts, and other improvements adjacent to the water's edge between the eastern end of the U.S. Government seawall on the north side of the Kalamazoo River Channel and the eastern boundary of Zone B as of the date of this Consent Judgment may be maintained, repaired, and replaced subject only to Applicable Law. The Permitted Uses in Zone D shall comply with the Township zoning ordinance, as modified by this Consent Judgment.

**15. Entrance Gates, Signage, etc.** Entrance gates and plazas, other structures and devices designed to control pedestrian and vehicular access to Plaintiff's Property or to provide security, and entry signage and other signage (including illuminated signage) shall be permitted anywhere within Plaintiff's Property not prohibited by Applicable Law or the Township zoning ordinance, as modified by this Consent Judgment.

**16. Assignment of Rights.** All of the rights and powers granted to, and the obligations imposed upon, Singapore Dunes in this Consent Judgment or by law, including the right or power to approve or disapprove any act, use, proposed action, or any other matter or thing, may be assigned by Singapore Dunes to any other person, entity, or group. Any such assignment may be made by appropriate written instrument in which the assignee(s) shall join for the purpose of evidencing its or their acceptance of such rights and powers and



such assignee(s) shall thereupon have the same rights and powers as are granted to Singapore Dunes in this Consent Judgment.

**17. Demand; Costs of Enforcement.** Neither Singapore Dunes nor the Township shall institute any action or other proceeding against the other to enforce any provision of this Consent Judgment until the expiration of 60 days after giving the other party written notice of the relief demanded by the party giving such notice, and the legal and factual bases on which the party giving such notice claims to be entitled to the relief demanded. In any action for enforcement of this Consent Judgment, the prevailing party shall be entitled to an award of its reasonable court costs incurred in connection with such enforcement action.

**18. No Impairment by Future Acts.** The rights of Singapore Dunes as set forth in this Consent Judgment are fully vested and enforceable, and no resolution, ordinance or ordinance amendment, government planning document, or regulation adopted by the Township shall impair those rights. Except as limited by the immediately preceding sentence, nothing in this paragraph shall preclude the Township from amending the Township zoning ordinance or the Township Code of Ordinances from time to time, as the Township deems appropriate.

**19. Interpretation.** Unless a contrary intent is clearly expressed, all references in this Consent Judgment to a particular exhibit, paragraph, or subparagraph mean the specified exhibit to or paragraph or subparagraph of this Consent Judgment. The word *including* means “including but not limited to.” If any provision of this Consent Judgment conflicts with Exhibit B or grants broader or lesser rights to Singapore Dunes than would be permitted under Exhibit B, the provisions of this Consent Judgment shall prevail. This Consent Judgment is and shall be construed and interpreted as an Order and Judgment of this Court. If any provision of this Consent Judgment conflicts with the Settlement Agreement, the provisions of this Consent Judgment shall prevail. If any provision of this Consent Judgment or any of its exhibits conflicts with any provision of the Township zoning ordinance or the Township of Saugatuck Code, the provision of this Consent Judgment or any of its exhibits that is deemed to conflict with the Township zoning ordinance or the Township of Saugatuck Code shall control over the conflicting provisions of the Township zoning ordinance and the Township of Saugatuck Code, as applicable.

**20. Reimbursement of Expenses.** The Township represents to Singapore Dunes that, as of the date of this Consent Judgment, the Township

has incurred more than \$125,000.00 in unreimbursed expenses for mailings, publication fees, reports and studies, professional fees, and miscellaneous expenses in connection with this Consent Judgment. Concurrently with the entry of this Consent Judgment, Singapore Dunes has paid \$75,000.00 to the Township in full satisfaction of all claims for reimbursement of the Township's costs and expenses that, as of the date of this Consent Judgment, the Township could assert against Singapore Dunes under the Township zoning ordinance, including Section 40-341 thereof, and the Township releases and discharges Singapore Dunes from all such claims.

**21. No Admission.** This Consent Judgment shall not be construed as an admission of fact, law, or liability by any party.

**22. Final Order.** This Consent Judgment fully adjudicates all of the claims and causes of action in this matter, including those pled and which could have been pled, and constitutes the final order of the Court. There is no award of attorney fees pursuant to 42 U.S.C. § 1988.

**23. Not a Rezoning and not a Contract.** This Consent Judgment is not intended to, and in fact does not, rezone Plaintiff's Property or any other property within the borders of the Township, either through contract zoning governed by Section 405 of the Michigan Zoning Enabling Act, or through any other means provided by the Michigan Zoning Enabling Act. This Consent Judgment is not a contract between Singapore Dunes and the Township; rather, it is an order of the United States District Court, Western District of Michigan, Southern Division.

### **Exhibits to Consent Judgment**

Exhibit A - Legal Description of Plaintiff's Property

Exhibit B - Development Zones on Plaintiff's Property

Exhibit C - Depiction of Parcel that may be Conveyed to State of Michigan

*(signatures are on the following page)*

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*Signature Page to Consent Judgment and Final Order*

Dated: \_\_\_\_\_, 2011

\_\_\_\_\_  
Hon. Paul L. Maloney, Chief Judge

Approved for Entry:

Approved for Entry:

/s/James R. Bruinsma  
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# **Exhibit A to Consent Judgment and Final Order**

Exhibit A to Consent Judgment in Singapore Dunes, L.L.C. vs. Saugatuck Township, USDC - WD Michigan, Case No. 1:10-CV-210

PART OF SECTIONS 3 & 4, T3N, R16W, SAUGATUCK TOWNSHIP  
ALLEGAN COUNTY, MICHIGAN

SINGAPORE DUNES, L.L.C.

EXHIBIT A TO CONSENT  
JUDGEMENT IN SINGAPORE  
DUNES, L.L.C. VS. SAUGATUCK  
TOWNSHIP, USDC - WD  
MICHIGAN, CASE NO.  
1:10-CV-210.

Owner:  
SINGAPORE DUNES, L.L.C.

**JJR** landscape architecture  
planning urban design  
civil engineering environmental science  
JJR, LLC  
110 MILLER AVENUE  
ANN ARBOR, MI 48104  
734.662.4457 T  
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ISSUED FOR	DATE
CLIENT REVIEW	5/17/2011
CLIENT COMMENTS	5/24/2011
CLIENT COMMENTS	5/26/2011
CLIENT COMMENTS	7/5/2011
CLIENT COMMENTS	7/13/2011
DENISON PCL EXCL.	7/18/2011

DRAWING TITLE

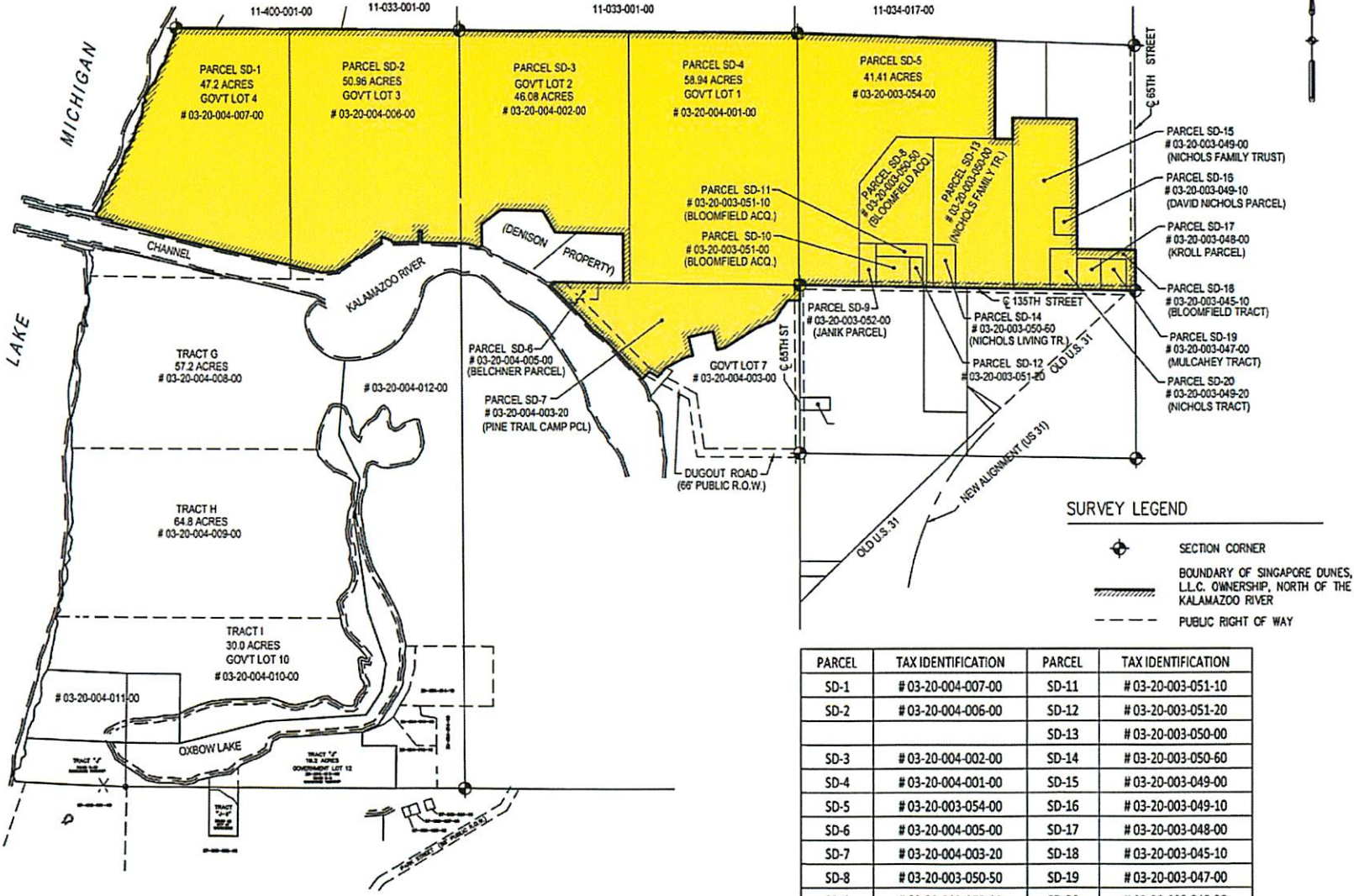
EXHIBIT A

ISSUE DATE 05/17/2011

SCALE 1"=800'

PROJECT NUMBER 24730.000

DRAWING NUMBER VP-101



File P: V:\24730\000\CAD\Resource\Exhibits\Compilation\Saugatuck\_Parcel\_Exhibit.dwg USDP:msubstaf DATE: Jul 18, 2011 TIME: 02:46 pm



SINGAPORE DUNES, L.L.C.

SD-1

TAX ID# 03-20-004-007-00

Government Survey Lot numbered 4 in Section 4, T. 3 N., R. 16 W. of the Michigan Meridian (according to the United States Government Survey);

EXCEPTING the strip of land for the Kalamazoo River as deeded to the United States of America in Liber 148, Page 517; also

ALSO EXCEPTING that portion of Government Survey Lot numbered 4 in Section 4, T.3 N, R. 16 W of the Michigan Meridian, (according to the United States Government Survey), lying Southerly of the Kalamazoo River, as relocated.

SD-2

TAX ID# 03-20-004-006-00

Government Survey Lot numbered 3 in Section 4, T. 3 N., R. 16 W. of the Michigan Meridian (according to United States Government Survey)

SD-3

TAX ID# 03-20-004-002-00

Government Survey Lot numbered 2 in Section 4, Town 3 North, Range 16 West of the Michigan Meridian (according to United States Government Survey).

EXCEPTING THEREFROM: Commencing at the Northeast corner of said Section 4; thence South 00 degrees 19 minutes 13 seconds East 1946.15 feet along the East Line of said Section 4; thence North 89 degrees 19 minutes 39 seconds West 1369.76 feet to the point of beginning; thence continuing North 89 degrees 19 minutes 39 seconds West 491.15 feet to reference point "A"; thence continuing North 89 degrees 19 minutes 39 seconds West 110 feet, more or less to the waters edge of the Kalamazoo River; thence Northwesterly 580 feet, more or less along said Kalamazoo River to a point South 00 degrees 01 minute 05 seconds East from from reference point "B" (reference point "B" being North 63 degrees 01 minute 56 seconds West 688.11 feet from reference point "A"); thence North 00 degrees 01 minute 05 seconds West 30 feet, more or less to reference point "B"; thence continuing North 00 degrees 01 minute 05 seconds West 139.29 feet; thence North 53 degrees 47 minutes 18 seconds East 184.47 feet; thence South 89 degrees 19 minutes 44 seconds East 324.83 feet; thence South 29 degrees 51 minutes 27 seconds East 192.94 feet; thence South 88 degrees 28 minutes 44 seconds East 532.80 feet; thence South 00 degrees 19 minutes 13 seconds East 380.81 feet to the point of beginning.

SD-4

TAX ID# 03-20-004-001-00

Government Survey Lot numbered 1 in Section 4 of T. 3 N., R. 16 W. of the Michigan Meridian (according to United States Government Survey).

SD-5

TAX ID# 03-20-003-054-00

The piece and parcel of land known and described as commencing at the Northwest corner of Section 3, T. 3 N., R. 16 W. of the Michigan Meridian; thence South along the West line of said Section 3 to the South line of the North 1/2 of the Northwest 1/4 of said Section 3; thence East along said mentioned South line 7 chains; thence North on a line parallel to the West line of said Section 3 a distance of 12 chains; thence North 39° East 7 chains; thence East on a line parallel to the said last mentioned South line 12 chains;

SINGAPORE DUNES, L.L.C.

thence North to the North line of said Section 3; thence West along the said North line of Section 3 to the place of beginning.

Tract "A" - More particularly described as follows:

Beginning at the Northwest corner of Section 3, T. 3 N., R. 16 W., Saugatuck Township, Allegan County, Michigan; thence South 87°-50'-37" East along the North line of said Section 3, 1545.87 feet; thence South 01°- 25'- 30" East, 756.24 feet; thence North 88°- 51'- 34" West, 792.07 feet; thence South 39°- 13'- 43" West, 460.19 feet; thence South 01°- 21'- 31" East, 800.63 feet to the South line of the North fractional 1/2 of the Northwest fractional 1/4 of said Section; thence North 88°- 55'- 43" West along said South line, 488.83 feet to the West line of said Section; thence North 00°- 19'- 14" West thereon, 1,946.17 feet to the place of beginning, containing 41.41 Acres.

SD-6  
BELCHNER ALTA  
TAX ID# 03-20-004-005-00

**LEGAL DESCRIPTION:**

The land referred to in this Commitment, situated in the County of Allegan, Township of Saugatuck, State of Michigan, is described as follows:

Part of Government Lot 7 in Section 4, Town 3 North, Range 16 West, described as follows: Beginning on the North line of said Government Lot 7 at a point 1566 feet West of the Northeast corner thereof; thence South 125 feet; thence West to the Kalamazoo River; thence Northwesterly along same to said North line of Lot 7; thence East to beginning.

Also commencing at the Northeast corner of said Government Lot 7; thence West on the North line of Government Lot 7 a distance of 1885.3 feet; thence South 45 degrees 10 minutes East 176.26 feet to the place of beginning of this description; thence East 46.80 feet; thence South 45 degrees 10 minutes East 28.37 feet; thence West 122.6 feet to the Kalamazoo River; thence North 45 degrees 10 minutes West along the River 28.37 feet; thence East 75.8 feet to the place of beginning.

**MORE PARTICULARLY DESCRIBED BY SURVEY:**

Commencing at the East 1/4 Corner, Section 4, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the East line of monumented Section 4 and Centerline of 66th Street N00°00'16"E 1319.28 feet to a point on the common line separating Government Lots 1 and 7, said point also on the North line of the South 1/2 of the North 1/2 of fractional Section 4, lying East of the Kalamazoo River; thence along the common line separating Government Lots 1 and 7 and the North line of the South 1/2 of the North 1/2 of fractional Section 4, lying East of the Kalamazoo River, N89°19'39"W 1327.51 feet; thence continuing along the common line separating Government Lots 2 and 7 and the North line of the South 1/2 of the North 1/2 of fractional Section 4, lying East of the Kalamazoo River, N89°19'06"W 238.88 feet to the POINT OF BEGINNING; thence S00°02'46"E 124.96 feet; thence N89°21'27"W 148.46 feet; thence S44°19'11"E 27.31 feet; thence N89°19'39"W 83.57 feet to intermediate traverse point B; thence continuing N89°19'39"W 16 feet more or less to the edge of the Kalamazoo River; thence Northerly along the historic edge of the Kalamazoo River 214 feet more or less to a point intersecting said historic edge of the Kalamazoo River and the common line separating Government Lots 2 and 7 and the North line of the

SINGAPORE DUNES, L.L.C.

South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River; thence S89°19'06"E 24 feet more or less along the common line separating Government Lots 2 and 7 and the North line of the South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River to intermediate traverse point C, said point bearing N45°52'59"W 209.98 feet from intermediate traverse point B; thence continuing from intermediate traverse point C, along the common line separating Government Lots 2 and 7 and the North line of the South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River, S89°19'06"E 363.58 feet to the Point of Beginning, being a part of the South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River, T3N, R16W, Saugatuck Township, Allegan County, Michigan, and a portion of Government Lot 7 lying East of the Kalamazoo River, containing 1.01 Acres of land (0.72 Acres Net) more or less, subject to the rights of the public over that portion as occupied by Dugout Road (a.k.a. Singapore Road), together with riparian rights as provided by law.

SD-7  
NORTHERLY PORTION OF THE PINE TRAIL CAMP  
TAX ID# 03-20-004-003-20

LEGAL DESCRIPTION:

The land referred to in this Commitment, situated in the County of Allegan, Township of Saugatuck, State of Michigan, described as follows:

Part of Government Lot 7, in Section 4, Town 3 North, Range 16 West described as follows: Commencing at the East Quarter corner of said Section 4; thence along the East Eighth line of said Section as monumented and the centerline of 66th Street, North 00 degrees 23 minutes 35 seconds West 1197.87 feet to the point of beginning; thence South 89 degrees 36 minutes 25 seconds West 94.15 feet; thence South 33 degrees 58 minutes 01 second West 185.06 feet; thence South 65 degrees 57 minutes 18 seconds West 156.71 feet; thence South 57 degrees 22 minutes 48 seconds West 286.42 feet; thence South 75 degrees 55 minutes 25 seconds West 63.08 feet; thence North 13 degrees 14 minutes 07 seconds West 147.04 feet; thence South 76 degrees 45 minutes 53 seconds West 195.31 feet; thence South 13 degrees 14 minutes 07 seconds East 148.40 feet; thence South 76 degrees 45 minutes 53 seconds West 55.48 feet; thence South 63 degrees 38 minutes 19 seconds West 173.52 feet; thence South 40 degrees 59 minutes 11 seconds West 100.00 feet; thence North 61 degrees 15 minutes 49 seconds West 78.33 feet; thence South 40 degrees 59 minutes 11 seconds West 47.63 feet to intermediate traverse point A; thence continuing South 40 degrees 59 minutes 11 seconds West approximately 32 feet to the edge of the Kalamazoo River; thence Northerly along the edge of said Kalamazoo River approximately 820 feet; thence South 89 degrees 42 minutes 40 seconds East approximately 50 feet to intermediate traverse point B, said point bearing North 44 degrees 24 minutes 58 seconds West 816.20 feet from intermediate traverse point A; thence continuing from intermediate traverse point B South 89 degrees 42 minutes 40 seconds East 83.57 feet; thence North 44 degrees 42 minutes 12 seconds West 27.31 feet; thence South 89 degrees 44 minutes 28 seconds East 148.46 feet; thence North 00 degrees 25 minutes 47 seconds West 124.92 feet to a point on the North line of the South Half of the North Half of said Section 4 and the North line of said Government Lot 7, lying East of the Kalamazoo River as previously surveyed; thence South 89 degrees 42 minutes 40 seconds East 1566.41 feet to the East Eighth corner as monumented; thence along the East Eighth line as monumented and the centerline of 66th Street South 00 degrees 23 minutes 35 seconds East 121.04 feet to the point of beginning.

MORE PARTICULARLY DESCRIBED BY SURVEY:



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Commencing at the East 1/4 Corner, Section 4, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the East line of monumented Section 4 and Centerline of 66 th Street N00°00'16"E 1198.24 feet to the POINT OF BEGINNING; thence S89°59'26"W 94.15 feet; thence S34°21'02"W 185.06 feet; thence S66°20'19"W 156.71 feet; thence S57°45'49"W 286.42 feet; thence S76°18'26"W 63.08 feet; thence N12°51'06"W 147.04 feet; thence S77°08'54"W 195.31 feet; thence S12°51'06"E 148.40 feet; thence S77°08'54"W 55.48 feet; thence S64°01'20"W 173.52 feet; thence S41°22'12"W 100.00 feet; thence N60°52'48"W 78.33 feet; thence S41°22'12"W 47.63 feet to intermediate traverse point A; thence continuing S41°22'12"W 7 feet more or less to the edge of the Kalamazoo River; thence along the edge of the Kalamazoo River 850 feet more or less; thence S89°19'39"E 16 feet more or less to intermediate traverse point B, said point bearing N44°01'57"W 816.20 feet from intermediate traverse point A; thence continuing from intermediate traverse point B S89°19'39"E 83.57 feet; thence N44°19'11"W 27.31 feet; thence S89°21'27"E 148.46 feet; thence N00°02'46"W 124.96 feet to a point on the common line separating Government Lots 2 and 7, said point also on the North line of the South 1/2 of the North 1/2 of fractional Section 4, lying East of the Kalamazoo River; thence along the common line separating Government Lots 2 and 7 and the North line of the South 1/2 of the North 1/2 of fractional Section 4, lying East of the Kalamazoo River S89°19'06"E 238.88 feet; thence continuing along the common line separating Government Lots 1 and 7, and the North line of the South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River S89°19'39"E 1327.51 feet to a point on the East line of monumented Section 4; thence along the East line of monumented Section 4 and Centerline of 66th Street, said line also being the East line of Government Lot 7, S00°00'16"W 121.04 feet to the Point of Beginning, being a part of the South 1/2 of the North 1/2 of fractional Section 4 lying East of the Kalamazoo River, T3N, R16W, Saugatuck Township, Allegan County, Michigan, and a portion of Government Lot 7 lying East of the Kalamazoo River, containing 17.63 Acres of land (16.31 Acres Net) more or less, subject to the rights of the public over that portion as occupied by 66th Street and Dugout Road (a.k.a. Singapore Road), together with riparian rights as provided by law.

SD-8  
BLOOMFIELD ACQUISITIONS  
TAX ID# 03-20-003-050-50

The land referred to is situated in the County of Allegan, Township of Saugatuck, State of Michigan, is described as follows:

Part of the Northwest fractional Quarter of Section 3, Town 3 North, Range 16 West described as: Beginning at a point on the East and West Eight line 990.0 feet East of the West Eight post of the Northwest fractional Quarter of said Section 3; thence North 330 feet; thence West 528 feet; thence North 462 feet; thence North 39 degrees East 462 feet; thence East 287.25 feet; thence South 1151.04 feet to the East and West Eight line of the Northwest fractional Quarter of said Section; thence West on said Eight line 50 feet to the place of beginning; including all improvements, easements, rights of way, licenses, privileges, hereditaments, appurtenances, abutter's rights, land underlying roadways adjacent to such land and all other rights related to such land.

SD-9  
JANIK  
TAXID# 03-20-003-052-00

LEGAL DESCRIPTION:

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The West 132 feet of the following described lands: A parcel of 5 Acres beginning on the South line of the North 1/2 of the Northwest 1/4 of Section 3, Town 3 North, Range 16 West 462 feet East of the West line of said Section; thence North 330 feet, thence East 660 feet, thence South to the South line of the North 1/2 of said Northwest 1/4, thence West to the point of beginning.

MORE PARTICULARLY DESCRIBED BY SURVEY:

Part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T. 3 N, R. 16 W described as: Commencing at the West 1/4 Corner of said Section 3; thence along the West line of said Section 3 (as previously surveyed), N00°00'16"E 1318.87 feet to the monumented West 1/8 corner of said Section 3; thence continuing along said monumented West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of Section 3; thence along said South line and centerline of 135th Avenue, S88°55'43"E 462.00 feet to the POINT OF BEGINNING; thence N00°00'16"E 330.00 feet; thence S88°55'43"E 132.00 feet; thence S00°00'16"W 330.00 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3 and centerline of 135th Avenue; thence along said South line and centerline, N88°55'43"W 132.00 feet to the Point of Beginning.

SD-10  
BLOOMFIELD ACQUISITIONS  
TAX ID# 03-20-003-051-00

Land situated in the Township of Saugatuck, County of Allegan, State of Michigan, is described as follows:

The land referred to is in the County of Allegan, Township of Saugatuck, State of Michigan and is described as:

The East 396 feet of the West 990 feet of the South 330 feet of the North Half of the Northwest Quarter of Section 3, Town 3 North, Range 16 West; including all improvements, easements, rights of way, licenses, privileges, hereditaments, appurtenances, abutter's rights, land underlying roadways adjacent to such land and all other rights related to such land

EXCEPTING THEREFROM commencing at the West Quarter corner of said Section 3; thence North 01 degree 03 minutes 52 seconds West 1318.77 feet along the West line of said Section 3; thence East 957.00 feet along the South line of the North Half of the Northwest Quarter of said Section 3, to the point of beginning of the land herein described; thence North 01 degree 03 minutes 52 seconds West 230.00 feet; thence West 363.00 feet; thence North 01 degree 03 minutes 52 seconds West 100.00 feet; thence East 396.00 feet; thence South 01 degree 03 minutes 52 seconds East 330.00 feet; thence West 33.00 feet to the point of beginning;

ALSO EXCEPTING THEREFROM commencing at the West Quarter corner of said Section; thence North 01 degree 03 minutes 34 seconds West 1318.89 feet along the West line of said Section; thence North 90 degrees 00 minutes 00 seconds East 855.00 feet along the South line of the North Half of the Northwest Quarter of said Section to the point of beginning of the land herein described; thence North 01 degree 03 minutes 34 seconds West 230.00 feet; thence North 90 degrees 00 minutes 00 seconds East 102.00 feet; thence South 01 degree 03 minutes 34 seconds East 230.00 feet; thence South 90 degrees 00 minutes 00 seconds West 102.00 feet along the South line of the North Half of the Northwest Quarter of said Section to the point of beginning;

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SD-11  
BLOOMFIELD ACQUISITIONS  
TAX ID# 03-20-003-051-10

Commencing at the West Quarter corner of said Section 3; thence North 01 degree 03 minutes 52 seconds West 1318.77 feet along the West line of said Section 3; thence East 957.00 feet along the South line of the North Half of the Northwest Quarter of said Section 3, to the point of beginning of the land herein described; thence North 01 degree 03 minutes 52 seconds West 230.00 feet; thence West 363.00 feet; thence North 01 degree 03 minutes 52 seconds West 100.00 feet; thence East 396.00 feet; thence South 01 degree 03 minutes 52 seconds East 330.00 feet; thence West 33.00 feet to the point of beginning;

SD-12  
BLOOMFIELD ACQUISITIONS  
TAX ID# 03-20-003-051-20

Land situated in the Township of Saugatuck, County of Allegan, State of Michigan, described as follows:

The land referred to is situated in the County of Allegan, Township of Saugatuck, State of Michigan and is described as:

Part of the Northwest Quarter of Section 3, Town 3 North, Range 16 West described as; Commencing at the West Quarter corner of said Section; thence North 01 degree 03 minutes 34 seconds West 1318.89 feet along the West line of said Section; thence North 90 degrees 00 minutes 00 seconds East 855.00 feet along the South line of the North Half of the Northwest Quarter of said Section to the point of beginning of the land herein described; thence North 01 degree 03 minutes 34 seconds West 230.00 feet; thence North 90 degrees 00 minutes 00 seconds East 102.00 feet; thence South 01 degree 03 minutes 34 seconds East 230.00 feet; thence South 90 degrees 00 minutes 00 seconds West 102.00 feet along the South line of the North Half of the Northwest Quarter of said Section to the point of beginning; including all improvements, easements, rights of way, licenses, privileges, hereditaments, appurtenances, abutter's rights, land underlying roadways adjacent to such land and all other rights related to such land

SD-13, SD-15, and SD-20  
NICHOLS FAMILY TRUST  
TAX ID# 03-20-003-050-00, TAX ID# 03-20-003-049-00, TAX ID# 03-20-003-049-20

HISTORIC LEGAL DESCRIPTION

The following legal description was obtained from Metropolitan Title Company, a division of First American Title Company, 275 Hoover Boulevard, Holland, Michigan, Commitment No. 273989, dated September 21, 2007.

Part of the Northwest fractional Quarter of Section 3, Town 3 North, Range 16 West described as: Beginning at a point on the South line of the North half of the Northwest Quarter of said Section, 6.90 Chains West of the Quarter line; thence North 80 rods; thence West 30 rods; thence South 80 rods to the South line of said North half; thence East along said South line 30 rods to the place of beginning.

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Excepting therefrom Commencing at the Southeast corner of the North Half of said Northwest fractional Quarter; thence West on the East and West Eighth line 455.40 feet; thence North 01 degree 14 minutes 40 seconds West parallel with the North and South Quarter line 420.00 feet to the place of beginning of this description; thence continuing North 01 degree 14 minutes 40 seconds West 210.00 feet; thence West 175.00 feet; thence South 01 degree 14 minutes 40 Seconds East 210.00 feet; thence East 175.00 feet to the place of beginning.

Also The North Half of the Northwest fractional Quarter of Section 3, Township 3 North, Range 16 West.

Excepting therefrom the East 686.4 feet

Also excepting therefrom the South 1320 feet of the West 264 feet of the East 950.4 feet.

Also excepting therefrom Commencing at the Northwest corner of said Section; thence South along the West line of said Section to the South line of the North Half of the Northwest fractional Quarter; thence East along said line 462 feet; thence North 792 feet; thence North 39 degrees East 462 feet; thence East 792 feet; thence North to the North line of said Section; thence West to the place of beginning.

Also excepting therefrom Beginning on the South line of the North Half of the Northwest Quarter of said Section 3, 462 feet East of the West line of said Section; thence North 330 feet; thence East 528 feet; thence South to the

South line of the North Half of said Northwest fractional Quarter; thence West to the place of beginning.

Also excepting therefrom Beginning at a point on the East and West Eighth line 990.0 feet East of the West Eighth post of the Northwest fractional Quarter of said Section; thence North 330 feet; thence West 528 feet; thence North 462 feet; thence North 39 degrees East 462 feet; thence East 287.25 feet; thence South 1151.04 feet to the East and West Eighth line of the Northwest fractional Quarter of said Section; thence West on said Eighth line 50 feet to the place of beginning.

Also excepting therefrom Commencing at the Southwest corner of the North Half of the Northwest fractional Quarter of said Section; thence East 462 feet; thence North 792 feet; thence North 39 degrees East 462 feet; thence East 792 feet to the place of beginning; thence North 713.87 feet to the North line of said Section; thence North 88 degrees 20 minutes East 355.04 feet; thence South 556.07 feet; thence West 264.03 feet; thence South 163.96 feet; thence South 89 degrees 07 minutes West 102.06 feet to the place of beginning.

MORE PARTICULARLY DESCRIBED BY SURVEY:

Part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T. 3 N, R. 16 W described as:  
Commencing at the West 1/4 Corner of said Section 3; thence along the West line of said Section 3 (as previously surveyed) and centerline of 66th Street, N00°00'16"E 1318.87 feet to the West 1/8 corner of said Section 3 (as previously surveyed); thence continuing along said West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3; thence along said South line and centerline of 135th Avenue, S88°55' 43"E 1215.01 feet to the POINT OF BEGINNING; thence N00°00'16"E 330.00 feet; thence N88°55'43"W 175.00 feet; thence N00°00'16"E 826.48 feet; thence S88°55'43"E 620.80 feet; thence N00°10'45"W 163.45 feet; thence S88°55'43"E 495.00 feet; thence S00°10'45"E 689.60 feet; thence N88°55'43"W 175.00 feet; thence S00°10'45"E 210.00 feet;

SINGAPORE DUNES, L.L.C.

thence S8°55'43"E 175.00 feet; thence S00°10'45"E 420.40 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3 and centerline of 135th Avenue; thence along said South line and centerline, N88°55'43"W 944.51 feet to the Point of Beginning, being part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan, containing 29.35 Acres of land (28.64 Acres Net), more or less, being subject to the rights of the public over that portion occupied by 135th Avenue, and subject to easements and restrictions.

SUBJECT TO THE RIGHTS OF THAT PORTION COVERED IN EASEMENT, AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 1239, PAGE 01, AND CONSENT JUDGEMENT, AS DISCLOSED BY INSTRUMENT RECORDED IN LIBER 764, PAGE 390.

SD-14  
NICHOLS LIVING TRUST  
TAX ID# 03-20-003-050-60

#### HISTORIC LEGAL DESCRIPTION

The following legal description was obtained from Metropolitan Title Company, a division of First American Title Company, 275 Hoover Boulevard, Holland, Michigan, Commitment No. 273997, dated September 21, 2007.

Part of the Northwest fractional Quarter of Section 3, Town 3 North, Range 16 West, described as follows: Beginning at a point on the East and West Eighth line of said Northwest fractional Quarter 1040.0 feet East of the West Eighth post; thence North 330.0 feet; thence East 175.0 feet; thence South 330.0 feet; thence West 175.0 feet to the place of beginning.

Together with a non-exclusive easement for ingress and egress as created, limited and defined in Easement recorded in Liber 1055, page 85.

#### MORE PARTICULARLY DESCRIBED BY SURVEY:

Commencing at the West 1/4 Corner, Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the West line of said Section 3 (as previously surveyed), N00°00'16"E 1318.87 feet to the monumented West 1/8 corner of said Section 3; thence continuing along said monumented West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of Section 3; thence along said South line and centerline of 135th Avenue, S88°55'43"E 1040.01 feet to the POINT OF BEGINNING; thence N0°00'16"E 330.00 feet; thence S88°55'43"E 175.00; thence S00°00'16"W 330.00 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3 and centerline of 135th Avenue; thence along said South line and centerline, N88°55' 43"W 175.00 feet to the Point of Beginning, being a part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan, containing 1.32 Acres of land (1.19 Acres Net), more or less, subject to the rights of the public over that portion occupied by 135th Avenue, also subject to easements and restrictions.

SD-16  
DAVID NICHOLS PARCEL  
TAX ID# 03-20-003-049-10



SINGAPORE DUNES, L.L.C.

#### HISTORIC LEGAL DESCRIPTION

The following legal description was obtained from Metropolitan Title Company, a division of First American Title Company, 275 Hoover Boulevard, Holland, Michigan, Commitment No. 273983, dated September 21, 2007.

Part of the Northwest fractional Quarter of Section 3, Town 3 North, Range 16 West, described as follows: Commencing at the Southeast corner of the North Half of said Northwest fractional Quarter; thence West on the East and West Eighth line 455.40 feet; thence North 01 degree 14 minutes 40 seconds West parallel with the North and South Quarter line 420.00 feet to the place of beginning of this description; thence continuing North 01 degree 14 minutes 40 seconds West 210.00 feet; thence West 175.00 feet; thence South 01 degrees 14 minutes 40 Seconds East 175.00 feet to the place of beginning.

Together with a non-exclusive easement for ingress and egress over a strip of land described as: Beginning on the South line of the above described parcel of land at a point 10.0 feet East of the Southwest corner of the parcel; thence East 30.0 feet; thence South 01 degree 14 minutes 40 seconds East 420.0 feet; thence West 30.0 feet; thence North 01 degree 14 minutes 40 seconds West 420.0 feet to the place of beginning.

#### DESCRIBED MORE PARTICULARLY BY SURVEY:

Commencing at the West 1/4 Corner, Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the West line of said Section 3 (as previously surveyed), N00°00'16"E 1318.87 feet to the monumented West 1/8 corner of said Section 3; thence continuing along said monumented West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional Quarter of Section 3; thence along said South line, S88°55'43"E 2159.52 feet to a point being distant 455.40 feet from the Southeast corner of the North 1/2 of the Northwest fractional 1/4 of said Section 3; thence N00°10'45"W 420.00 feet to the POINT OF BEGINNING; thence N88°55' 43"W 175.00 feet; thence N00°10'45"W 210.00 feet; thence S88°55'43"E 175.00 feet; thence S00°10'45"E 210.00 feet to the Point of Beginning, being a part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan, containing 0.84 Acres of land, more or less, including an easement for ingress and egress as recorded in Liber 1239, Page 501, Allegan County Records, also subject to easements and restrictions.

SD-17  
KROLL PARCEL  
TAX ID# 03-20-003-048-00

#### LEGAL DESCRIPTION

The West 185 feet of the South 231.5 feet of the East 455.4 feet of the North Half of the Northwest Quarter of Section 3, Town 3 North, Range 16 West.

#### MORE PARTICULARLY DESCRIBED BY SURVEY AS:

Commencing at the West 1/4 Corner, Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the West line of said Section 3 (as previously surveyed) and centerline of 66th

SINGAPORE DUNES, L.L.C.

Street, N00°00'16"E 1318.87 feet to the West 1/8 corner of said Section 3 (as previously surveyed); thence continuing along said West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3; thence along said South line and Centerline of 135th Avenue, S88°55'43"E 2159.52 feet to the POINT OF BEGINNING; thence N00°00'45"W 231.56 feet; thence S88°55'43"E 185.04 feet; thence S00°10'45"E 231.56 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of Section 3 and Centerline of 135th Avenue; thence along said South line and Centerline, N88°55'43"W 185.04 feet to the Point of Beginning, being a part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan, containing 0.98 Acres of land (0.84 Acres Net), subject to the rights of the public over that portion as occupied by 135th Avenue

SD-18 & SD-19  
(Bloomfield - Mulcahey Tracts)  
TAX ID# 03-20-003-045-10 and  
TAX ID# 03-20-003-047-00

Parcel 1: The West 200 feet of the South 231.5 feet of the East 270.4 feet of the North Half of the Northwest Quarter of Section 3, Town 3 North, Range 16 West.

Parcel 2: The South 312.5 feet of the East 27-3/5 rods of the Northeast Fractional Quarter of the Northwest Fractional Quarter, of Section 3, Town 3 North, Range 16 West. Except the West 385 feet of the South 231.5 feet.

ALSO EXCEPTING that portion conveyed to the State Highway Department in Liber 254, Page 612.

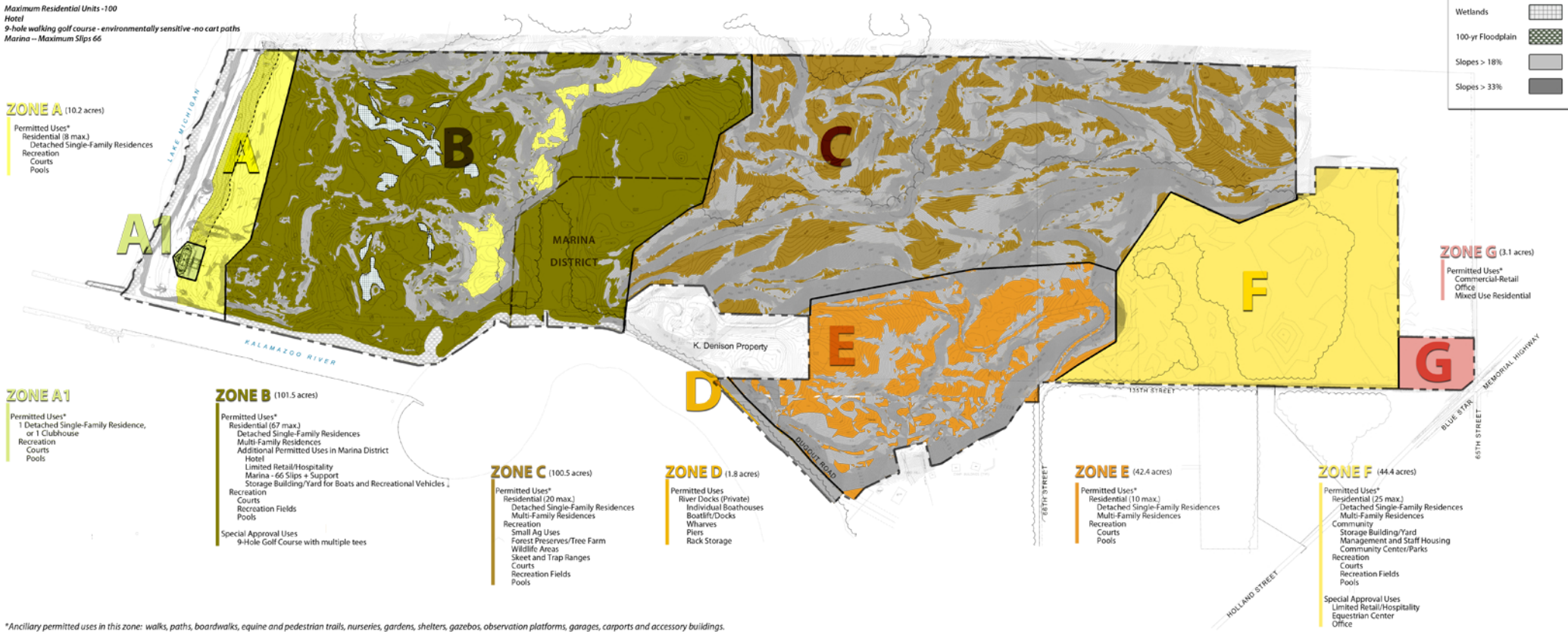
MORE PARTICULARLY DESCRIBED BY SURVEY:

Commencing at the West 1/4 Corner, Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan; thence along the West line of said Section 3 (as previously surveyed) and centerline of 66th Street, N00°00'16"E 1318.87 feet to the West 1/8 corner of said Section 3 (as previously surveyed); thence continuing along said West line, N00°00'16"E 0.41 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of said Section 3; thence along said South line and Centerline of 135th Avenue, S88°55'43"E 2344.56 feet to the POINT OF BEGINNING; thence N00°10'45"W 231.56 feet; thence N88°55'43"W 185.04 feet; thence N00°10'45"W 81.02 feet; thence S88°55'43"E 455.40 feet to a point on the North-South 1/4 line of the Northwest fractional 1/4 of Section 3 and centerline of 65th Street; thence along said North-South 1/4 line and centerline, S00°10'45"E 237.72 feet to a point on the Northwesterly line of US 31 (Blue Star Highway); thence Southwesterly along said Northwesterly line, 113.94 feet along the arc of a 3869.83 foot radius curve, concave left, through a central angle of 1°41'13", and a chord which bears S49°59'56"W 113.93 feet to a point on the South line of the North 1/2 of the Northwest fractional 1/4 of Section 3 and Centerline of 135th Avenue; thence along said South line and centerline, N88°55'43"W 182.84 feet to the Point of Beginning, being a part of the North 1/2 of the Northwest fractional 1/4 of Section 3, T3N, R16W, Saugatuck Township, Allegan County, Michigan, containing 2.20 Acres of land (1.86 Acres Net), being subject to the rights of the public over that portion as occupied by 65th Street and 135th Avenue

## **Exhibit B to Consent Judgment and Final Order**



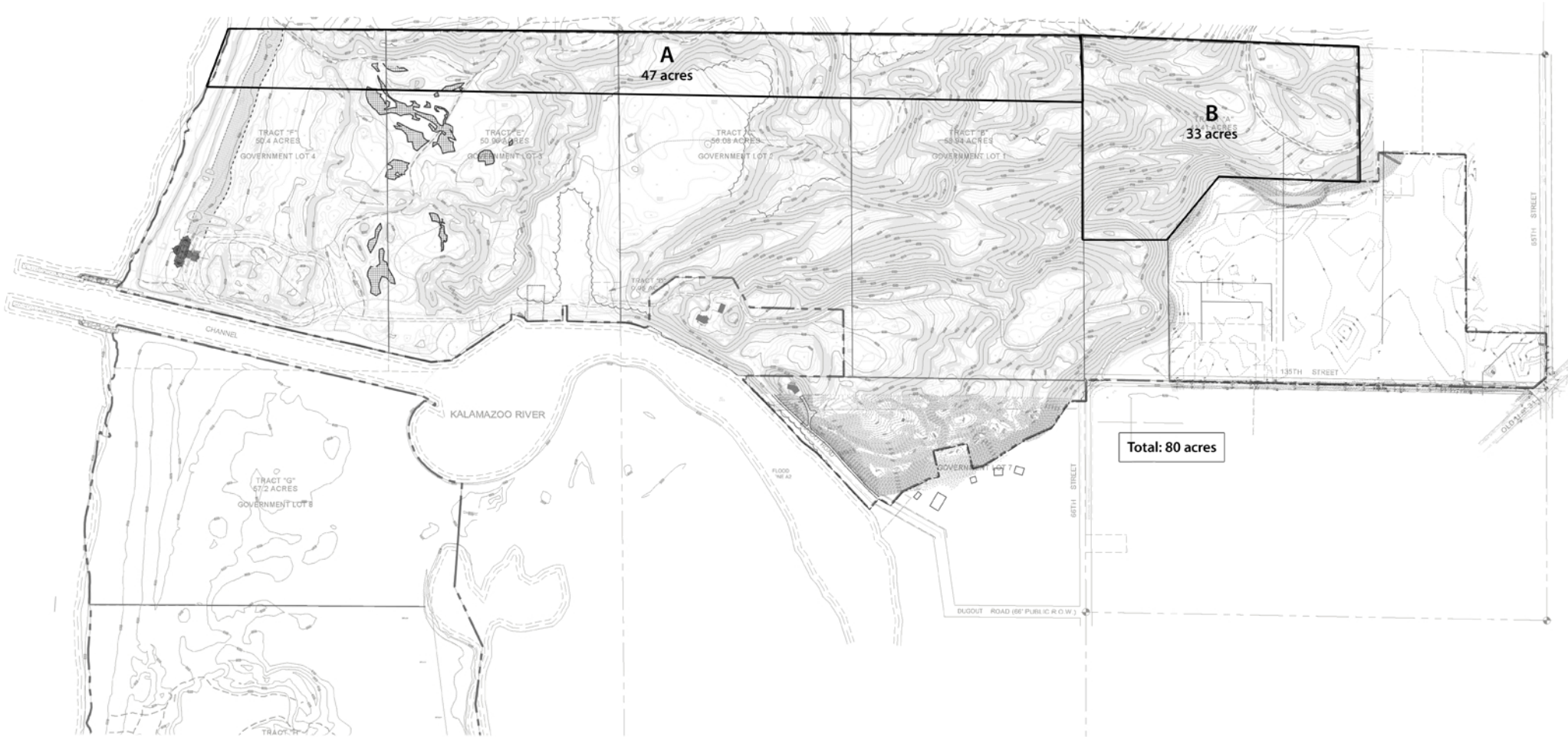
Exhibit B to Consent Judgment in Singapore Dunes, L.L.C. vs. Saugatuck Township, USDC - WD Michigan, Case No. 1:10-CV-210



\*Ancillary permitted uses in this zone: walks, paths, boardwalks, equine and pedestrian trails, nurseries, gardens, shelters, gazebos, observation platforms, garages, carports and accessory buildings.

# **Exhibit C to Consent Judgment and Final Order**

Exhibit C to Consent Judgment in Singapore Dunes, L.L.C. vs. Saugatuck Township, USDC - WD Michigan, Case No. 1:10-CV-210



**United States District Court**  
Western District of Michigan  
Southern Division

**Singapore Dunes, L.L.C.**,  
a Michigan limited liability company,  
Plaintiff,

Case No. 1:10 – cv – 00210 – PLM

vs.

Chief Judge Paul L. Maloney

**Saugatuck Township**,  
a Michigan township,  
Defendant.

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**Memorandum in Support of Motion for Entry of  
Consent Judgment and Final Order**

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**Introduction**

Plaintiff Singapore Dunes, L.L.C. filed this action in March 2010 against Defendant Saugatuck Township (the *Township*) and the individual members of the Township Board, solely in their representative capacities (collectively, the *Individual Defendants*), seeking declaratory and injunctive relief, along with statutory attorney fees under 42 U.S.C. § 1988b. Representatives of the parties have met and negotiated in an effort to resolve their dispute. These negotiation sessions have been ongoing for more than one year and have resulted in a settlement agreement that has been approved by all parties.

The parties' settlement agreement includes a provision for entry of a Consent Judgment and Final Order in the form appended as Exhibit 1 to the Motion for

Entry of Consent Judgment and Final Order (the *Consent Judgment*). The motion should be granted and the Consent Judgment entered.

The entry of a consent judgment is proper when the agreement is “fair, adequate, and reasonable and consistent with the public interest.”<sup>1</sup> As explained below, the proposed consent judgment readily meets this test: it is a good faith compromise of disputed claims; it ends the parties’ dispute; and it provides a framework for future land use decisions to be made with respect to Plaintiff’s land. In addition, the Consent Judgment has received a thorough vetting in the public arena, having been the subject of a public meeting attended by hundreds of citizens.

### **A. Background Facts**

#### *The Denison Property*

The real property at the center of this dispute is land in Saugatuck Township commonly known as the Denison Property. The Denison family owned several hundred acres of land along the Lake Michigan shore, to the north and south of the Kalamazoo River channel — a concrete boating channel created and maintained by the United States Army Corps of Engineers.

Following a divorce, the ownership of the Denison Property was divided within the family, with an undivided one-half interest eventually owned by the Estate of Franklin Denison, and a complementary interest owned by the Gertrude Winslow Denison Trust. Plaintiff purchased each one-half interest in separate transactions

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<sup>1</sup> *Williams v. Vukovich*, 720 F.2d 909, 922 – 23 (6<sup>th</sup> Cir. 1983).

that closed in May and June of 2006, respectively.<sup>2</sup> Plaintiff also purchased additional acreage adjacent to that portion of the Denison Property lying north of the Kalamazoo River channel. The Denison Property north of the channel and the adjacent parcels are referenced as the *Subject Property* and are depicted on Exhibit A to the Consent Judgment. The Subject Property consists of 20 separate parcels encompassing 307 acres, stretching from the Lake Michigan shore on the west to the Blue Star Highway on the east.

*The Broward Industrial Site on the Denison Property*

In connection with its purchase of the Subject Property, Plaintiff was assigned a lease and became the landlord of an industrial tenant that occupied a portion of the Subject Property. Since the late-1970s, a company known as Broward Marine (or its successors) operated a boat building and repair factory on a parcel along the north bank of the Kalamazoo River. In 2009, Plaintiff obtained possession of the former factory. Although Plaintiff could have continued this preexisting industrial use, Plaintiff instead began preparations for a more suitable residential and recreational use of the land by removing the factory and remediating the factory site in accordance with a permit with attached specifications from Michigan's Department of Environmental Quality. Plaintiff's expenditures in connection with obtaining possession from the tenant and remediating the site exceed a quarter of a million

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<sup>2</sup> As part of the transaction, a 10-acre parcel on the north side of the Kalamazoo River was carved out, and a Denison family member owns a home on that site. Plaintiff subsequently conveyed all of the Denison Property lying south of the river channel to The Land Conservancy of West Michigan.



dollars.<sup>3</sup> The dilapidated condition of the building and surrounding acreage is depicted in Exhibit 1.

*Adoption of the R-4 Amendment*

One of the principal issues underlying the claims in this case is the Township's Ordinance Number 2006-02, § 19, known as "R-4 Lakeshore Open Space Zoned District" (the *R-4 Amendment*).<sup>4</sup> The R-4 Amendment is a new zoning classification that became effective shortly after Plaintiff closed on its purchase from the Denison Estate. The R-4 Amendment applies to all of the parcels that make up the former Denison Property, with the exception of one 41-acre parcel that is farthest from Lake Michigan. The affected parcels are identified on Exhibit A as SD-1, -2, -3, and -4 and consist of approximately 200 acres of land.

The R-4 Amendment is a significant change from the prior zoning for parcels SD-1 – 4. Before the R-4 Amendment, these parcels were in zoning districts R-1, R-2, and R-3B. Within these districts, a range of uses were available as of right or by special approval. In contrast, for Plaintiff's property under the R-4 Amendment, the only use as of right is to leave the property as greenspace, and the only other use that might be allowed is single-family homes, with a density of 1 house per 5 acres.<sup>5</sup> Besides restricting all housing to detached, single-family houses, the R-4

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<sup>3</sup> These expenses are memorialized in a final judgment of the Allegan County Circuit Court, *Singapore Dunes, L.L.C. v. Palm Beach Polo Holdings, Inc.*, Case No. 08 – 43598–CZ.

<sup>4</sup> The R-4 Amendment was previously filed in this matter. [Dkt. 28-Ex 8]

<sup>5</sup> After this suit was filed, the R-4 Amendment was modified to allow docks and piers along the Kalamazoo River.

Amendment also reduced the potential number of permitted dwellings to approximately one-third of the number available under prior zoning. The R-4 Amendment eliminated all special approval uses. And the R-4 Amendment created a unique procedure for Plaintiff to obtain a building permit. Under the R-4 Amendment, the issuance of a building permit for any housing is discretionary with the Township Planning Commission, to be considered solely in connection with a planned unit development application.

### **B. Nature of the Claims**

This Court is familiar with the claims in this matter in connection with earlier briefing. This lawsuit challenges the adoption, terms, and application of the R-4 Amendment. Plaintiff contends that Saugatuck Township failed to satisfy the procedural requirements of the Due Process Clause of the Fourteenth Amendment in connection with the adoption of the R-4 Amendment. Plaintiff alleges that the Township failed to give notice of the public hearing on the amendment to the Estate and to occupants of the Denison Property, and that it otherwise failed to allow a meaningful opportunity for Plaintiff to be heard with respect to the R-4 Amendment after Plaintiff made such a request.

Plaintiff also contends that the R-4 Amendment fails to satisfy the substantive requirements of the Due Process Clause, as well as the requirements of the Equal Protection Clause of the Fourteenth Amendment. Plaintiff alleges that the R-4 Amendment impermissibly imposes restrictions and permitting requirements on



Plaintiff's land that are not imposed on neighboring properties with identical characteristics, and that there is no rational basis for this difference.

Plaintiff also challenges the conduct of Saugatuck Township in the aftermath of the adoption of the R-4 Amendment, contending that the Township impermissibly solicited and accepted payments from local environmental activists who demand that the Township interfere with Plaintiff's private property rights with respect to the entirety of the Subject Property. Plaintiff alleges that these payments evince an impermissible and irreparable bias against Plaintiff's lawful exercise of its private property rights.

Plaintiff seeks a judgment declaring the R-4 Amendment void *ab initio*, a declaration that the operative zoning of the property is the classification in effect before the unlawful adoption of the R-4 Amendment, a restraint against further governmental action by the Township Board members with respect to any of the Subject Property, and statutory attorney fees incurred in bringing this litigation.

### **C. Procedural History of this Litigation**

Plaintiff filed this action on March 2, 2010. All parties have actively litigated this matter since it was filed. Defendants not only denied the substantive aspects of all of Plaintiff's claims, but Defendants also denied that this Court had subject matter jurisdiction over this matter. Defendants' arguments were set forth in five separate motions to dismiss and/or for summary judgment that Defendants filed in August 2010, seeking dismissal of this action in its entirety on a variety of different grounds.

The Court subsequently determined that the challenge to the Court's jurisdiction would be considered first, with the remaining motions held in abeyance. After full briefing and a hearing on the jurisdictional challenge, in an Opinion and Order dated March 18, 2011, this Court denied Defendants' jurisdictional motion and ordered an expedited discovery schedule for the completion of discovery on Counts I, II, and VII of Plaintiff's complaint.

As a consequence of the Court's ruling, the parties have been actively engaged in discovery. Plaintiff served additional document requests, interrogatories, and deposition subpoenas on important third-party witnesses. Defendants likewise served additional interrogatories, document requests, and requests for admissions. All parties have also worked to schedule the depositions of the witnesses for each side, expected to be more than 15 depositions to be completed by August 30, 2011. All told, Defendants have served two sets of interrogatories, three sets of document requests, and three sets of requests for admission. Plaintiff has served two sets of interrogatories, two sets of document requests, and eight third-party subpoenas.

In addition to this discovery, there have been five motions for summary judgment, three motions to compel, one motion for supplementation of an order, an amended complaint, a motion to strike, and an appeal of the decision on that motion.

In short, in the 17 months that this litigation has been pending, all parties have zealously advocated their respective positions and fully sought to protect their interests.

### **D. The Proposed Settlement Agreement and Consent Judgment**

Concurrently with the ongoing discovery and briefing, representatives of the parties have continued their efforts to resolve their dispute through a negotiated agreement. The parties negotiated a settlement agreement that resolves all claims in this matter and provides for entry of a Consent Judgment. The Consent Judgment would allow Plaintiff to propose a site plan for a residential and waterfront community on the Subject Property, centered around re-use of the old industrial site. The key features of the potential project are a 66-slip marina, an adjacent 25-suite hotel, residential dwellings, a “walker’s only,” environmentally sensitive, 9-hole golf course, and an equestrian center.

The parties were assisted in this Consent Judgment by Hank Byma, a land planner retained by Plaintiff with extensive experience regarding Great Lakes land use. His firm has done a complete analysis of the land over a series of years, including wetlands, topography, soils, access routes, flora and fauna (including threatened species), watershed, historical resources, and overall site context within the broader community. He provided his analyses to the Township and public, and he also provided an extensive set of responses to key questions regarding his work. A copy of those questions and answers is appended as Exhibit 2. The proposed uses in the Consent Judgment are informed by Mr. Byma’s analyses and provide for the most intense uses to be made in the land that has been under industrial use for decades, thereby allowing the more sensitive acreage to be left as open space. The Township also consulted with its outside planning and zoning expert, Mark Sisson.

The Consent Judgment does not displace the Township zoning ordinance or rezone any of the Subject Property. And the Consent Judgment does not authorize the issuance of any building permits or allow any construction activity to commence. Rather, the Consent Judgment sets forth the terms and conditions under which Plaintiff might submit a site plan to the Township Planning Commission for its review and approval.<sup>6</sup>

The Permitted Uses and Special Approval Uses that may be included in this site plan are set forth within seven zones, delineated A – G, with the specific uses and limits for those uses specified for each zone. There is an overall cap of 100 residential units<sup>7</sup> on the entire 307 acres, and most of the acreage, approximately 80%, would remain as open space with no buildings or roadways.

The Permitted Uses and Special Approval Uses that make up the development authorized by the Consent Judgment are not a new or wholly different set of uses for the Subject Property. Instead, the Permitted Uses and Special Approval Uses are generally a subset of the Permitted Uses and Special Approval Uses that would be available if Plaintiff were to prevail in this litigation, as summarized in the table below:

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<sup>6</sup> The Consent Judgment also has no effect on the authority of other regulatory agencies, such as the Michigan Department of Environmental Quality, which regulates critical dune areas on the Subject Property.

<sup>7</sup> The number increases to 115 if no hotel is constructed.

<b>Permitted and Special Approval Uses</b>	<b>If Plaintiff Prevails<sup>8</sup></b>	<b>Parties' Compromise</b>
<b>Potential number of residences</b>	265	100
<b>Single-family residences</b>	Allowed	Allowed
<b>Duplexes, Triplexes, Quadplexes</b>	Allowed	Allowed, except in Zone A
<b>Golf Courses</b>	Allowed	A Par 3, 9-hole, Walker's Only Environmentally-Sensitive Golf Course allowed in Zone B
<b>Docks, Piers, Wharves, Boathouses</b>	Allowed along river	Allowed along river
<b>Marinas</b>	Allowed	A 66-slip Marina allowed only in the Marina District
<b>Horses and Horse Stables</b>	Allowed	Horses and Equestrian Center allowed only in Zone F
<b>Hotel</b>	Not allowed	A 25-Suite Hotel in the Marina District
<b>Restaurant/Retail</b>	Not allowed	Limited Retail/Hospitality to service residents and guests in Marina District
<b>Churches, public schools, and educational institutions</b>	Allowed	Not allowed
<b>Public Utility Buildings and Service Buildings</b>	Allowed	Not allowed
<b>Apartments</b>	Allowed	Not allowed
<b>Hospitals</b>	Allowed	Not allowed
<b>Nursing Homes</b>	Allowed	Not allowed

<sup>8</sup> The Permitted Uses and Special Approval Uses identified in this column are taken from the provisions of the Township zoning ordinance that relate to the R-3B and R-2 zoning districts — §§ 40-272, 40-275, 40-332, 40-339, 40-780, and 40-1046. [Dkt. 28-Ex. 8]

<b>Permitted and Special Approval Uses</b>	<b>If Plaintiff Prevails<sup>8</sup></b>	<b>Parties' Compromise</b>
<b>Mineral Extraction (e.g., sand mining)</b>	Allowed	Not allowed
<b>Gas/Oil Wells</b>	Allowed	Not allowed

The only uses in the Consent Judgment that would not be restored if Plaintiff were to prevail are the 25-suite hotel and the limited retail/hospitality primarily to service the residents of the housing and users of the hotel and marina. Otherwise, the Permitted Uses and Special Approval Uses set forth in the Consent Judgment all would be available if the R-4 Amendment were invalidated and prior zoning restored.

Under the Consent Judgment, site plan review before the Planning Commission is required for all Permitted Uses and Special Approval Uses, except certain single-family residences. Most of the Township's usual site plan approval standards will apply to site plan applications for the Subject Property, except that the Consent Judgment requires that the Township to give written reasons, based on competent, material, and substantial evidence on the record as a whole, for denying or conditionally approving proposed site plans.

Special Approval Uses require approval of the Township Planning Commission. Special Approval Uses specified in the Consent Judgment include community buildings, a 9-hole golf course (walking only), and horse stables, horse arenas, and paddocks. The provisions of the Township zoning ordinance generally applicable to applications for Special Approval Uses will govern Special Approval Use

applications for the Subject Property, except that the Township acknowledges, in paragraph 3 of the Consent Judgment, that it has conclusively determined that the Special Approval Uses specified in the Consent Judgment can be designed, constructed, operated, and maintained in a manner which satisfies its standards for approving Special Approval Use applications.

To accommodate the possible expansion of the Saugatuck Dunes State Park, which abuts the north boundary of the Subject Property, paragraph 5 of the Consent Judgment permits approximately 80 acres of the Subject Property to be sold to the State of Michigan without reducing the total number of single-family or multi-family residences that may be constructed on the remainder of the Subject Property. The Consent Judgment is binding upon and inures to the benefit of Plaintiff the Township, and their respective successors and assigns.

#### **E. Public Input on the Proposed Consent Judgment**

To allow the public an opportunity to review and comment on the agreement, the proposed settlement and Consent Judgment were made available to the public on June 28, 2011, with a public hearing held on July 22, 2011. A press statement announcing the possible settlement was released, and all settlement documents were posted for public review on the Township's website.

The press statement was effective in informing the public of the proposed agreement. The proposed agreement was extensively covered by the local Saugatuck newspaper, the *Commercial Record*, as well as by the *Allegan County Observer*, the *Holland Sentinel*, and the *Grand Rapids Press*. The proposed settlement was also



widely covered by broadcast media, including stories on local television and radio stations WOTV8, WWMT, Fox 17, WZZM, Michigan Public Radio, and WHTC.

There have been numerous news articles published in area print media regarding the settlement between the date that it was announced and the date of the public hearing on July 22, 2011. The settlement agreement has also been the subject of ongoing commentary on the opinion pages of local publications, garnering more than a dozen published letters for and against the proposed agreement.<sup>9</sup> And many residents and other interested persons communicated directly with members of the Township Board.

The public hearing was held at the largest venue available to the Township, the Saugatuck High School.<sup>10</sup> More than 450 persons attended the meeting, and all who wanted to speak were given an opportunity to make a public comment. Public comment lasted nearly four hours. At the close of that public hearing, the Township Board openly deliberated and voted on the Settlement Agreement, approving it by a unanimous vote of 5 to 0.

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<sup>9</sup> A spreadsheet identifying all of the published media is attached as Exhibit 3.

<sup>10</sup> The first attempt to hold the meeting failed because of a scheduling conflict at the high school. The only space available was the cafeteria, which proved to be too small. The meeting was later held in the gymnasium, which was large enough to accommodate all interested persons.

## Law and Argument

### **I. The Consent Judgment is Fair, Adequate, and Reasonable and Should Be Entered by This Court.**

#### **a. The review of a consent judgment is within the discretion of the Court.**

Consent judgments have been recognized as hybrid, combining the attributes of a contract and a judicial decree. *Local No. 93, Intern. Ass'n of Firefighters, AFL-CIO C.L.C v. City of Cleveland*, 478 U.S. 501, 519 (1986). Because of this “dual character,” courts typically review a proposed consent judgment before entering it to ensure that it is not illegal or the product of collusion, *Kelley v. Thomas Solvent Co.*, 717 F. Supp. 507, 515 (W.D. Mich. 1989), and that it is “fair, adequate, and reasonable as well as consistent with the public interest.” *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983).

The review of a consent judgment is committed to the informed discretion of the Court. *Kelley*, 717 F. Supp. at 515. In the exercise of this discretion, the Court should consider the strong policy favoring voluntary settlement of litigation. *Id.* In addition, when the government is a party to a consent judgment, “the balancing of competing interests affected by a proposed consent decree ‘must be left, in the first instance, to the discretion of the [government representatives].’” The Court also should consider the nature and duration of the litigation, and the judgment of experienced counsel, when evaluating the Consent Judgment for entry. *Id.* As explained below, the Consent Judgment proffered here is neither illegal nor the product of collusion. It was fully negotiated over the course of one year, and is a fair, adequate, and reasonable compromise of the parties’ dispute.

**b. The Consent Judgment reflects a compromise of disputed claims.**

The reference points for evaluating the reasonableness of the proposed Consent Judgment are the possible outcomes, i.e., the result if Plaintiff wins versus the result if Plaintiff loses. The proposed Consent Judgment sets forth terms that fall squarely within these two possibilities.

First, the Consent Judgment avoids a much more intense use of the land that would be possible if Plaintiff prevailed in this case. If Plaintiff were to prevail and the old zoning restored, the potential number of residential dwelling units would nearly triple on the 200 acres that make up Parcels SD-1– SD-4. Likewise, if Plaintiff were to prevail, the range of uses available to Plaintiff would greatly expand. Rather than being restricted to a waterfront resort project in the midst of a tourist area, Plaintiff could take advantage of the additional density to develop a retirement village. Although Plaintiff has never sought to use the land in any other way, the prior zoning opens up a range of non-residential uses such as sand mining or other mineral extraction. The prior zoning also allows use of the land for public utility buildings or to house an educational institution. The Consent Judgment ensures that these sorts of uses will not be restored by a judgment of this Court and instead that the use of the Subject Property will be consistent with the resort nature of the Saugatuck area.

Second, the Consent Judgment avoids catastrophic financial consequences for the Township. By settling now, both parties avoid the ongoing costs of litigation, but the Township also avoids the risk that it might be ordered to pay Plaintiff's legal

fees as provided by federal statute if Plaintiff prevails on its claims under 42 U.S.C. § 1983. Plaintiff estimates that those fees would be well over \$1 million, and even more than that if this matter were to be taken through a full trial on the merits. These fees exceed the Township's annual operating budget and would render the Township insolvent without an immediate and extraordinary property tax hike. The Consent Judgment safeguards the resources of the Township by avoiding this risk and also provides for a reimbursement to the Township of \$75,000 for professional expenses incurred in connection with the Consent Judgment.

Third, the Consent Judgment allows the Township to retain decision-making control over the land. A significant issue in this litigation is the claim of improper bias introduced by the payment of money to the Township by environmental advocates. As part of its requested relief, Plaintiff seeks to ensure a fair decision-maker with respect to all of its property holdings in the Township. The Consent Judgment avoids Court involvement in land use decisions and leaves those decisions in the hands of the Township Planning Commission, subject to the terms of the Consent Judgment.

**c. The Township has the authority to agree to the entry of the Consent Judgment.**

The terms of the Consent Judgment are within the authority of a township under Michigan law to resolve a dispute with a landowner. It is well-established that a township has the authority to sue and to be sued, and inherent in this authority is the power to settle a lawsuit. *See Presnell v. Bd of Cnty Rd Commisioners of Wayne Cty*, 306 N.W.2d 516, 519 – 20 (Mich. Ct. App. 1981);

*Green Oak Township vs. Munzel*, 661 N.W.2d 243, 247 n7 (Mich. App. 2003). The power to exercise this authority rests with the township board as the governing body under state law. Mich. Comp. Laws § 41.2.

The scope of the power to settle arises out of the claims in dispute. Where there is an honest dispute that presents a real risk of an adverse outcome, a township is not compelled to roll the dice and take a case to its conclusion via expensive litigation. The Township can instead fashion a compromise that avoids the full extent of the consequences presented by the claims against it. See *Feily v. Bay View Camp Ground Ass'n of Methodist Episcopal Church*, 210 Mich. 197, 206, 177 N.W. 485, 488 (1920) (no requirement that municipality must resolve dispute through expensive litigation).

When involved in a dispute over zoning, a township can enter into a consent judgment that restores rights that the landowner contends were unlawfully taken away. And a township can authorize new uses for specified locations, which are deemed to be in the nature of a variance, without exceeding its power under Michigan law. The authority of a township to settle a lawsuit in this manner under Michigan law was carefully considered by the Michigan Court of Appeals in *Green Oak Township vs. Munzel, supra*. In *Green Oak Township*, the plaintiff sought to develop a mobile home park and was denied rezoning. The plaintiff sued, and the matter was resolved through entry of a consent judgment that allowed the development of a mobile home park. The consent judgment was challenged as outside the power of the township because the judgment did not follow the

particularized requirements of the applicable zoning enabling statute, including the right of referendum. The Court of Appeals concluded that the consent judgment was a lawful exercise of the township's power, and that usage rights conferred were in the nature of a zoning variance, not an amendment of the zoning ordinance. *See also Petoskey Investment Group, L.L.C. vs. County of Emmet*, Case No. 5:04-cv-0059, United States District Court, Western District of Michigan (entry of consent judgment authorizing a particularized set of uses in particular locations on the plaintiff's property to resolve rezoning dispute); *Petoskey Investment Group, L.L.C. v. Bear Creek Township*, 2004 WL 2754684 (Mich. App. Dec., 2, 2004); *Pulte Land Co., L.L.C. v. Alpine Township*, 2006 WL 2613450 (Mich. App. Sept. 12, 2006); *Inverness Mobile Home Cmty., Ltd. v. Bedford Twp.*, 687 N.W.2d 869, 874 (Mich. Ct. App. 2004) ("township board may by consent judgment agree to grant a use variance").

The usage rights set forth in the Consent Judgment here are a compromise of the consequences that might occur if the Township were to prevail and are within the power of the Township Board to authorize.

**d. The terms of the Consent Judgment provide a reasonable land use option.**

The terms of this Consent Judgment set forth a reasonable land use option for the Subject Property. The proposed uses provide for a compact development footprint, with the most intense activity to be made in the area of the former industrial site, thereby allowing the more sensitive acreage to be left as open space. All uses are consistent with the tourist-based economy of the area.



**e. The public interest has been fully protected in this process.**

It would be an understatement to say that there are differences of opinion regarding how the Subject Property should be used. But in evaluating the propriety of the Consent Judgment, the Court should defer to the reasoned decision of the elected officials entrusted with the task of representing their constituents in the Township. *Kelley, supra*, 717 F. Supp. at 515. The Township has been fully advised by a multitude of parties regarding the characteristics of the land and the surrounding community.

This Consent Judgment was not a hasty or uninformed choice. There have been years of debate and acrimony over the use of this land. There have been public meetings and a lively back and forth exchange in local newspapers and on websites dedicated to this issue. There has been no lack of study or review or imagination in crafting this compromise. Not all members of the public will agree with the result, but they have been heard and their views considered. The parties have conferred and have determined that this Consent Judgment is the preferred option to continued litigation and its attendant expense and risk. Plaintiff respectfully requests that the Court enter the proposed Consent Judgment.

## Relief Requested

For the reasons set forth above, Plaintiff respectfully requests that this Court grant the motion and enter the Consent Judgment in the form attached.

Dated: July 26, 2011

/s/ James R. Bruinsma  
One of the attorneys for Singapore  
Dunes, L.L.C.

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**Exhibit 1 to Memorandum in Support  
Photos of Broward Factory**



## **Singapore Dunes, L.L.C.**

Saugatuck, MI

Public Meeting

July 18, 2011





Boat Barn





**Broward Boat Barn**



**Exhibit 2 to Memorandum in Support  
H. Byma Q & A**



MEMORANDUM

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Township Board Q & A  
Public Hearing

July 18, 2011

24730.000

SUBJECT

DATE

PROJECT NO.

Saugatuck Township Board  
Saugatuck Township Planning Commission

TO

Hank Byma

734.669.2775

734.780.8420

FROM

TELEPHONE NO.

FAX NO.

  
SIGNATURE

**General Design Questions**

Q Is all of the Denison Property essentially the same or are there differences among the various zones? If so, what are the key differences?

**A There are important differences. Generally, the open, flatter, less vegetated dune areas are the acres closest to Lake Michigan in Zone A and the western two-thirds of Zone B. The Marina District is a flat, highly disturbed area that has been in industrial use for approximately 40 years. East of the Marina District, particularly in Zone C and Zone E, the land is highly forested with some steep dunes. The land farther east along 135<sup>th</sup> Avenue is flat and unremarkable and has been in residential and small horse pasture use in the past. The differences can be further seen by reviewing the natural features plans that have been documented for some time.**

Q Are there areas that you consider to be less environmentally sensitive or valuable such that they are better suited to development? If so, where?

**A The best areas for a project are those areas that already have been disturbed and that are flat, which is the old Broward factory site. The uses laid out in Exhibit B concentrate the housing, marina, and related amenities in that location. The steepest and most forested areas will remain natural, and the flat western portion of the property which is within the state critical dune overlay is reserved for low density single-family houses; and there could be an equestrian center, with a small parcel closest to Blue Star highway maintaining its current commercial zoning.**

Q Describe how the land could be developed in each zone if this plan is approved.

**A As noted above, the core of the usage rights are concentrated in the Marina District at the old factory site. That is where the marina, hotel, and larger multi-family housing units could be sited. The remaining acreage that was the Denison Property and the Pine Trail Camp property is reserved for single- and smaller multi-family housing units, and possibly a walking-only 9-hole, environmentally-sensitive Par 3 golf course.**



**MEMORANDUM**

July 18, 2011

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- Q How does this project compare in size and scope to other developments along Lake Michigan?
- A There is no typical development project or size. Waterfront land uses range widely from public parks to nuclear power plants. But one generally sees far higher densities along the Lake Michigan especially land that has views of the water, and more particularly so in Saugatuck because of the combined value of the river channel and Lake Michigan. Near Holland, for example, Park Township is considering a 45-unit project on only 8½ acres. The overall cap of 100 units in the proposed agreement, along with the locational restrictions informed by the existing environment, compel a far different and much more balanced and sustainable land use approach, with more open space using green site development and building principles.**
- Q How does a project of the type allowed under the settlement affect our services infrastructure?
- A We understand that the Township has capacity in its water and sewer system, and we expect that we could tap into that system as part of this project. If not, we can support the project with a private system. In any case, we would expect no stress on local services and see this as benefitting the Township by using its designed capacity and providing additional tax base.**
- Q Can sand dunes really support these kinds of buildings?
- A Yes, and the investment the owner and future occupants would be making would require sensible and sustainable designs. That means avoiding steep slopes, using native vegetation to stabilize the soils, and locating roads in troughs or pre-existing pathways. The soil type is stable and supports buildings using conventional design standards.**
- Q Won't you be destroying a lot of critical dunes with this development?
- A No, the State of Michigan highly regulates any construction activity in the dunes. We have worked closely with them on the removal of the Broward factory and the re-vegetation of that site, as well as on the restoration of the failing seawall. The project avoids nearly all 33% and above slopes except for two small impacts that allow us to create a road that meets township private road standards. No buildings are proposed within the regulated slope areas.**
- Q Why do you believe it is more desirable to have taller multi-family buildings instead of single-family houses?
- A The goal is a compact design that preserves open space and avoids sprawl. The tallest buildings are built on the lowest ground, behind dunes. Far shorter buildings, set on top of dunes, would be more prominent than the design**



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### concept underlying Exhibit B.

Q Where is the location of the old Singapore townsite with reference to the planned development under the agreement?"?

**A We have studied all of the available literature regarding the location of Singapore, as well as worked with Kit Lane, who literally wrote the book on Singapore's history. We know that there is nothing in the area of the Marina District, as that land has recently been disturbed during the removal of the old Broward factory. The existing plat of Singapore depicts a series of planned streets in that area that in fact were never built. According to the literature, the principal buildings of Singapore that actually did exist at some point, particularly the old Astor House, would have been located at the site of the dune immediately to the west of the Marina District. We believe that this dune is largely manmade, a by-product of the river channel having been dug in the early 1900s. To the extent any wood framing of any of the buildings still exists, it would be under that dune, which will remain undisturbed. The lumber mills themselves would have been along the river west of the old boat factory site. The removal and relocation of those mills during the late-1800s has been well-documented, along with the removal and relocation of several buildings, such as the bookstore in downtown Saugatuck.**

### Marina Questions

Q How does the Marina District compare in size to the old Broward factory?

**A The Broward factory was a long structure, stretching approximately 730 feet inland from the Kalamazoo River. It occupied much of the footprint of land that would be the site of the marina, as well as the hotel. The remaining acreage around the hotel was highly disturbed with industrial debris and building materials, as the slides accompanying these questions show. Frank Denison also did his own dredging of the river as needed to keep it open for his yacht business. Various piles of dredging soils are also evident in this area.**

Q How big is a boat slip? Is there any standard size?

**A The slips will be scaled to accommodate typical Lake Michigan watercraft and would be similar to boat slips seen up the Kalamazoo River in Saugatuck and Douglas. The plan shows slips ranging from 35' to 60', a common size of marina slips in the State of Michigan along the Lake Michigan and Lake Huron coastlines.**

Q Has any analysis been done of the buried remains of Singapore at the marina site?

**A As noted above, the area has been highly disturbed and there is nothing there. No archeological test pits have been done because the historic research does not support this activity and, in any event, would require a separate permit from**



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**the MDEQ.**

Q Will engine noise carry across the water and disturb the natural areas to the South?

**A During periods of heavy use in the summer, boat traffic up and down the river is the norm. There is also a history of boaters parking their boats in the lagoon area for makeshift parties (see the attached slides). In contrast to this unregulated activity in the river, a marina like this typically has noise rules and on-site management to enforce them. In addition, the slopes and vegetation that are present around the marina site substantially mitigate any noise. We do not expect that the marina will add any significant noise to the typical summer boating scene.**

Q Will this marina put Tower Marine and other marinas in town out of business?

**A We expect that this marina will be a benefit to the entire boating community. Our efforts will support the State's interest that the river channel remains usable, and it will enhance Saugatuck as a boating destination. We have the support of local marinas.**

**View Questions**

Q Why does the hotel need to be 90' tall?

**A The majority of the hotel suites and condo units are nestled in the old boatyard valley between the forested tall western dune ridge and the even taller eastern dune ridge. Most of the Marina District dwelling units have a narrow southwesterly viewshed across the river. The vast majority of the hotel suites and facilities are located in the lower three-story wings and tower base, completely below the dune ridges (no view of the lake). The same applies to the majority of the condo units. The only opportunity these condos and suites have for panoramic vistas of Lake Michigan are at the Crow's Nest Observation level which is just above the tree line. This is a fair trade-off to have the many dwelling units densely clustered and tucked into the valley between the dunes, against having that many more units dispersed out in the open dunes. From a design perspective, a shorter hotel would be far worse. If the central rotunda were chopped off and the belvedere removed, the ambiance and uniqueness of Singapore Dunes will be substantially destroyed, turning it into an upscale motor lodge with balconies. These are landmark level unique features that transcend the run-of-the-mill lakeshore developments around the Great Lakes. To lose them is to lose the heart and soul of the design concept.**

Q Will the hotel be visible from Lake Michigan?

**A The hotel is 2,400' east of Lake Michigan. The top of the roof line would be all but invisible to anyone on the Lake. Under ideal viewing conditions, a person carefully looking for the hotel might see the top roofline from the Lake, but it**



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**would be barely visible. Please refer to the vantage point study showing the scale of the building in relation to the shoreline.**

Q What will artists see from the Crow's Nest in Tallmadge Woods?

**A A far nicer set of buildings than the old boat factory and only from the farthest north point of that property. Most of Tallmadge Woods cannot see the marina district site.**

Q Will the hotel block views to the Lake from the Dune rides?

**A No, it's topographically impossible.**

Q How will views from the natural area of the Saugatuck Dunes State Park be affected by this project?

**A Most of the natural area has no vantage point to the Marina District. Generally, a person would need to be adjacent to the river in this location and only looking directly north to have a clear view of the Marina District.**

Q Will the project ruin the views from Oval Beach?

**A No, because of the topography the project is not possible to see from Oval Beach. Only the existing beach house will be partially visible if you are in the water.**

Q Will light pollution from the hotel destroy stargazing?

**A No, there is no street lighting planned, and upward glare will be nominal or non-existent.**

**Miscellaneous**

Q Is a golf course really open space?

**A Yes, the possible golf course is a walker's only course with only minor changes to topography to accommodate tees and approaches, and greens. It will be a recreational amenity with no buildings, essentially indistinguishable from the surrounding acreage except for some grass. This open space, unlike built or paved environments, will among other worthier functions preserve scenic beauty and views, provide habitat for plants and wildlife, absorb the rains and runoff, and help protect water supplies. And it will be highly seasonal and likely only to be open between May and October**





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Q Who is your market? Who will live here?

**A Second homeowners attracted to waterfront and equestrian amenities. These are the sorts of residences that get used most often in the summer months and only sporadically throughout the year.**

Q Are there any green design solutions proposed as part of this project?

**A There is a range of such features contemplated. Examples are roll-up snow fences to allow walker access to the beach and to the golf course and to protect the dunes. Green stormwater design is proposed, We will be proposing a green marina operation. The project proposes native vegetation, and will strongly recommend solar and wind orientation. We will be carefully controlling any woody vegetation removal.**

Q Will skeet shooting pose a threat to neighbors or attendees at the park?

**A No, if a range is installed, there will be ample acreage to accommodate the activity with no effect on neighboring lands. It will be limited in use to the project residents and guests.**

Q Will this project require you to remove a lot of trees?

**A Exhibit B avoids any significant construction activity in the heavily forested areas. Zones C and E will be left largely undisturbed. Limited clearing is intended for driveways and homesites.**

Q What effect will this development have on threatened plants and animals?

**A We have done a thorough analysis of flora and fauna and avoided any regulated areas. The most sensitive areas are located on the South Denison property, which has been permanently protected.**

Q In your experience, would the DEQ ever bless this sort of project in the critical dunes?

**A They will only bless a project where there is careful adherence to their requirements, which means that steep slopes and regulated areas must be avoided, and that disturbance of sloped areas must be minimized. We are confident that the parameters set forth in the Consent Judgment provide a workable framework to meet state permitting requirements.**

Q How will you get water and sewer to the houses?

**A See my comments above regarding existing infrastructure.**



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Q What about electricity and other utilities?

**A There are preexisting power and natural gas lines servicing the beach house as well as the old factory site. To the extent possible, additional lines will be routed under roadways or will use direct boring processes.**

Q Won't horses trample the dune grass and cause massive erosion?

**A Horses are far less destructive than the neighboring dunes schooners. The key is to restrict horses to existing and defined pathways (many of which were used by horses over the history of the site) that most often follow the base of the dune slopes, and to ensure that areas adjacent to the pathways remain vegetated and undisturbed.**

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cc:

**Exhibit 3 to Memorandum in Support  
Spreadsheet of Media Coverage**

## Exhibit 3 to Memorandum in Support of Motion for Entry of Consent Judgment

<b>SAUGATUCK TOWNSHIP/SINGAPORE DUNES, L.L.C. PRINT MEDIA PIECES</b>				
<b>Article Title</b>	<b>Author</b>	<b>Type</b>	<b>Publication</b>	<b>Publication Date</b>
Face reality and settle McClendon litigation	Dean Batchelor	Reader contributor	Holland Sentinel	7/9/2011
Saugatuck Township might not decide on McClendon dune plan July 18	Jim Hayden	News Article	Holland Sentinel	7/6/2011
At last common sense in McClendon case	John W. Breen	Letter	Commercial Record	7/6/2011
Aubrey McClendon, Saugatuck Township reach proposed settlement over dune development	John Agar	News Article	GR Press	6/28/2011
Blue Star	Scott Sullivan	Editorial	Commercial Record	7/7/2011
'Settlement' is outrage, should be nixed	Marcia Perry	Letter	Commercial Record	7/7/2011
Dunes deal not done yet	Tracey Shafroth	Letter	Commercial Record	7/7/2011
Agreement lets McClendon flout local laws	Jill Winston	Letter	Commercial Record	7/7/2011
There are no downsides to McClendon-Saugatuck Township settlement	R.J. Peterson	Reader contributor	Holland Sentinel	7/3/2011
Settlement is not the last word on McClendon property	Tracey Shafroth	Reader contributor	Holland Sentinel	7/6/2011
Critic of Aubrey McClendon's Saugatuck Township dune development opposes proposed settlement	John Agar	News Article	GR Press	6/29/2011
Settlement of Aubrey McClendon's dune development suit goes to township board, residents	John Agar	News Article	GR Press	6/28/2011
McClendon-Saugatuck Township reach proposed lawsuit settlement	Jim Hayden	News Article	Holland Sentinel	6/28/2011
Dunes preservation should apply to all	Thomas Glass	Letter	Commercial Record	6/30/2011
Township, McClendon propose dunes settlement	Scott Sullivan	News Article	Commercial Record	6/30/2011
5-year Saugatuck Township duneland fight ends as settlement reached	Jim Hayden	News Article	Holland Sentinel	6/28/2011
Settlement serves both Saugatuck Township and Aubrey McClendon	Larry A. Sybesma	Reader contributor	Holland Sentinel	7/12/2011
Saugatuck city holds back on McClendon discussion	Jim Hayden	News Article	Holland Sentinel	7/12/2011
Township's proposed settlement with Aubrey McClendon is simply unacceptable	Lawrence K. Ritchie	Reader contributor	Holland Sentinel	7/7/2011
Proposed dunes settlement win for all	R.J. Peterson	Reader contributor	Commercial Record	7/7/2011
Nothing good for the community in this deal	David and Allison Swan	Reader contributor	Holland Sentinel	7/14/2011
Should the Saugatuck Twp. Board approve the proposed settlement with McClendon?		News Article	Holland Sentinel	7/14/2011
Agreement is best choice for township, residents	Dick Waskin	Reader contributor	Holland Sentinel	7/14/2011
Don't create a 'free zone' in Saugatuck Township	Liz Engel	Reader contributor	Holland Sentinel	7/13/2011
Limited Seats for Dunes Hearing July 18	Scott Sullivan	News Article	Commercial Record	7/14/2011
July 18 township dunes hearing: focus on what's at hand	Michael Allen	Letter	Commercial Record	7/14/2011
Blue Star	Scott Sullivan	Editorial	Commercial Record	7/14/2011
Future Owner knew nothing about dunes re-zoning? Please ...	Joyce Petter	Letter	Allegan County Observer	7/14/2011
Group calls proposed duneland settlement plan 'dangerous deal'	Megan Schmidt	News Article	Holland Sentinel	7/13/2011
Proposed settlement gives away too much	Dayle Harrison	Letter	Allegan County Observer	7/13/2011
McClendon protestors speak only for selves, not all	P.G. Walter	Letter	Commercial Record	7/14/2011
Proposed agreement should be nixed	Sheldon Wettack	Letter	Commercial Record	7/14/2011
Time to reach settlement for good of Saugatuck Township, all	Dick Waskin	Letter	Commercial Record	7/14/2011
Proposed agreement threatens historic Saugatuck	Royce Yeater	National Trust for Historic Preservation	Holland Sentinel	7/15/2011

## Exhibit 3 to Memorandum in Support of Motion for Entry of Consent Judgment

<i>SAUGATUCK TOWNSHIP/SINGAPORE DUNES, L.L.C. PRINT MEDIA PIECES</i>				
Article Title	Author	Type	Publication	Publication Date
Letter to Saugatuck Township Residents and Taxpayers	Saugatuck/Douglas Chamber of Commerce	Letter	Direct Mail	7/12/2011
Dune land debate: Two sides will try to sway public Monday	Jim Hayden	News Article	Holland Sentinel	7/16/2011
Turn out to show opposition to McClendon agreement	Sheldon Wettack	Reader contributor	Holland Sentinel	7/16/2011
Saugatuck Takes No Position On McClendon/Township Proposal	Efrain Sandoval	News Article	Allegan County Observer	7/15/2011
McClendon Meeting Cut Short in Saugatuck	Gary Brower	News Article	Holland Sentinel	7/18/2011
Saugatuck Twp. dunes meeting rescheduled for Friday	Gary Brower	News Article	Holland Sentinel	7/19/2011
Saugatuck meeting on dunes development rescheduled after police break up earlier meeting	Myron Kukla	News Article	GR Press	7/19/2011
Another round set in Saugatuck duneland battle	Gary Brower	News Article	Holland Sentinel	7/19/2011
Dunes, Tourism in Balance In Saugatuck Marina Plan	Kari Lydersen	News Article	Chicago News Coop	7/20/2011
Heated dunes hearing ends amid fracas, is reset	Scott Sullivan	News Article	Commercial Record	7/21/2011
Dueling dunes press conferences set stage	Scott Sullivan	News Article	Commercial Record	7/21/2011
Dunes fiasco never ends	Ted Swoboda	Letter	Commercial Record	7/21/2011
Unheard voices have second chance	David Swan	Letter	Commercial Record	7/21/2011
Crowd shouts down dune presentation	Scott Sullivan	News Article	Allegan County Observer	7/20/2011
Rescheduled Township/McClendon Hearing Set For This Friday		News Article	Allegan County Observer	7/22/2011
Township Urged To Sign Settlement	Ted Swoboda	Letter	Allegan County Observer	7/22/2011
Property Tour Reveals Proposed Inn Will Have Minimal Visual Impact	Efrain Sandoval	News Article	Allegan County Observer	7/22/2011
Conduct of Monday Saugatuck Township meeting was deplorable	Liz Paxson	Reader contributor	Holland Sentinel	7/21/2011
Saugatuck dune meeting ended by swelling crowd, scuffle with police	Myron Kukla	News Article	GR Press	7/18/2011
Dune land debate: Know the people, the place, the terms	Jim Hayden	News Article	Holland Sentinel	7/16/2011
Saugatuck Township Board weighs former Denison property settlement bid	Myron Kukla	News Article	GR Press	7/14/2011

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SINGAPORE DUNES, L.L.C., a Michigan limited  
liability company,

Plaintiff,

v

SAUGATUCK TOWNSHIP, a Michigan township,

Defendants.

CASE NO. 1:10-CV-210

HON. PAUL L. MALONEY, CHIEF U.S.  
DISTRICT JUDGE

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**DEFENDANT SAUGATUCK TOWNSHIP'S JOINDER IN PLAINTIFF'S MOTION FOR  
ENTRY OF CONSENT JUDGMENT AND FINAL ORDER**

Defendant, Saugatuck Township, hereby files its joinder to Plaintiff's Motion for Entry of Consent Judgment and Final Order. (Dkt. # 134.)

**RELIEF REQUESTED**

Defendant, Saugatuck Township, respectfully requests that this Honorable Court grant Plaintiff's Motion, and enter the proposed Consent Judgment in the form attached to Plaintiff's Motion.

DATED: July 26, 2010

*/s/ Craig R. Noland*

\_\_\_\_\_  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SINGAPORE DUNES, L.L.C.,	)	
a Michigan limited liability company,	)	Case No. 1:10-cv-00210-PLM
	)	
Plaintiff,	)	Chief Judge Paul L. Maloney
	)	
v.	)	Magistrate Judge Joseph Scoville
	)	
SAUGATUCK TOWNSHIP,	)	
a Michigan township; et al.,	)	
	)	
Defendants.	)	

---

**STIPULATION AND PROPOSED ORDER  
FOR DISMISSAL OF INDIVIDUAL DEFENDANTS WITH PREJUDICE**

---

The Parties, having met and conferred, stipulate as follows under Fed. R. Civ. P. 41(a)(2):

1. This is an action under 42 U.S.C. § 1983 relating to the adoption and terms of a zoning ordinance in Saugatuck Township.
2. The parties have negotiated a settlement agreement that resolves all of the claims in this action. The settlement agreement provides for entry of a consent judgment, which is the subject of a separate motion before this Court.
3. The settlement agreement also provides for the dismissal with prejudice of the individual defendants: Supervisor William Wester, Trustee James Hanson, Trustee Chris Roerig, Treasurer Pat Knikelbine, and Clerk Jane Wright, who have been named in this action in their official capacities only.

4. The settlement agreement provides that the individual defendants are to be dismissed from this action upon execution of the settlement agreement, without regard to the timing for consideration or the entry of the Consent Judgment.

5. The parties hereby stipulate to the entry of an order in the form attached dismissing all claims against the individual defendants in their entirety and with prejudice. The parties shall bear their own costs.

Dated: July 26, 2011

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

SINGAPORE DUNES, L.L.C.,	)	
a Michigan limited liability company,	)	Case No. 1:10-cv-00210-PLM
	)	
Plaintiff,	)	Chief Judge Paul L. Maloney
	)	
v.	)	Magistrate Judge Joseph Scoville
	)	
SAUGATUCK TOWNSHIP,	)	
a Michigan township; et al.,	)	
	)	
Defendants.	)	

**PROPOSED ORDER**

Before the Court is the parties' Stipulation for the Dismissal of Individual Defendants with Prejudice (Dkt. #\_\_\_). The Court GRANTS the requested relief and hereby DISMISSES all claims against Supervisor William Wester, Trustee James Hanson, Trustee Chris Roerig, Treasurer Pat Knikelbine, and Clerk Jane Wright, in their entirety and WITH PREJUDICE. The parties shall bear their own costs.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2011

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PAUL L. MALONEY  
Chief U.S. District Judge