



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LANSING



DAN WYANT  
DIRECTOR

January 6, 2014

VIA E-MAIL AND U.S. MAIL

Mr. Stephen Neumer  
Singapore Dunes, LLC  
P.O. Box 958  
South Haven, Michigan 49090

Dear Mr. Neumer:

SUBJECT: Department of Environmental Quality, File Number 13-03-0079-P  
T3N, R16W, Sections 3 and 4, Saugatuck Township, Allegan County

The Department of Environmental Quality (DEQ) has reviewed the above-referenced application for a permit pursuant to Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. The DEQ has reached a decision on the application. Based on information, data, revised plans received December 5, 2013, and conditioned upon meeting the additional requirements listed below, the DEQ has determine that your application can be approved and a permit issued.

This letter does not constitute a permit. There are two significant concerns that Singapore Dunes must address through revisions, clarifications, or supplements to its application before the DEQ will offer a draft permit.

**A. Reduction of overall impacts and impacts to steep slopes:**

In the eastern/wooded dune area, the DEQ accepts the proposed route as the least impacting to the critical dune area (CDA), as depicted by the revised plans dated December 5, 2013.

However, in all areas of the proposed project, depletion or degradation of the CDA can be reasonably reduced beyond what the existing plans depict by submitting revisions that demonstrate maximum efforts have been utilized to reduce impacts to the CDA. Revised plans must be submitted as follows:

1. "Usable area" road width. With the exception of the two proposed cul-de-sacs, the maximum "usable area" width of the combination of pavement, curb, and shoulder should not exceed 32 feet. Retainage (see discussion below) is not included in this limit.

2. Slope of fill and retainage. In areas where fill is to occur and the proposed slopes of 1-foot vertical rise in a 3-foot horizontal plane (1:3; or 33 percent) would be utilized, you must consider minimizing impacts by either using retainage or fill with slopes of 1:1.
  - o To assure human health and safety are considered during design, we recommend all decisions on locations, materials, and methods, including type of retainage, be made by a qualified professional engineer. Plans should consider the disposal of storm water without significant soil erosion and without sediment transport to any stream or other body of water.
  - o To reduce impacts in slope areas that exceed 33 percent, retaining structures must be considered.
  - o Gabion walls are not preferred by the DEQ since they are known to deteriorate relatively quickly and occupy significant surface area to construct. Examples of more acceptable retainage include: steel sheet piling walls, soldier pile walls with various lagging materials, soil-concrete walls, drilled and cast tangential concrete piling walls, and interlocking precast concrete module walls.

**B. Conservation easement:**

Singapore Dunes has offered to place approximately eight acres of interdunal wetland complex under a conservation easement. The "*Declaration and Grant of Conservation Easement*" submitted on December 5, 2013, is not acceptable. In order for the conservation easement to be acceptable to the DEQ, it must follow the DEQ's model "Agreement for Conservation Easement." This model document is enclosed and can be found at [http://www.michigan.gov/documents/deq/lwm-wetlands-conservationeasements\\_263027\\_7.pdf](http://www.michigan.gov/documents/deq/lwm-wetlands-conservationeasements_263027_7.pdf).

An acceptable conservation easement must be submitted that includes:

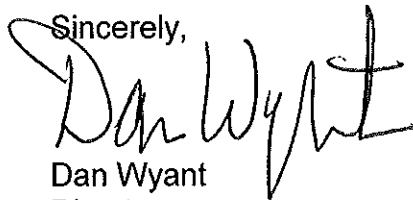
1. Granting the easement to either the DEQ or a qualified land conservancy.
2. Acceptable conservation easement text and associated exhibits.
  - o Additional modifications to the proposed conservation easement will be considered if the modifications make the proposed conservation easement more acceptable to both Singapore Dunes and the DEQ. These may be discussed with Mr. Ben Zimont, Kalamazoo District Office, Water Resources Division, DEQ.

Mr. Stephen Neumer  
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The DEQ recognizes that Singapore Dunes had a short turnaround time for submitting the materials that were requested in our November 21, 2013, letter. Singapore Dunes' response to that letter was received by the DEQ on December 5, 2013. While those materials were adequate to allow the DEQ to make a decision, not all of the materials had sufficient detail for use in developing an appropriate permit. Mr. Zimont will be contacting your agent, SmithGroupJJR, to discuss which plan sheets are necessary and the specific details that will need to be contained on the plans.

We recognize the complexity of this proposal and appreciate your continued cooperation in this matter. We believe that, with the outlined changes, a permit can be issued that minimizes impact to the natural resources and meets all state regulatory requirements.

If you have any questions regarding this matter, please contact Mr. Zimont at 269-567-3561; zimontb@michigan.gov; or DEQ, Water Resources Division, Kalamazoo District Office, 7953 Adobe Road, Kalamazoo, Michigan 49009-5025; or you may contact me.

Sincerely,  
  
Dan Wyant  
Director  
517-284-6700

Enclosure

cc: Mr. William Wester, Saugatuck Township  
Mr. Hank Byma, SmithGroupJJR  
Mr. James R. Bruinsma, McShane & Bowie, P.L.C.  
Mr. Robert Reichel, Department of Attorney General  
Mr. William Creal, DEQ  
Ms. Kim Fish, DEQ  
Mr. Mike Masterson, DEQ  
Ms. Colleen O'Keefe, DEQ  
Mr. Luis Saldivia, DEQ  
Mr. Kameron Jordan, DEQ  
Mr. Ben Zimont, DEQ

## AGREEMENT FOR CONSERVATION EASEMENT

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

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

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

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

Permittee \_\_\_\_\_ (*insert name and address of Permittee if other than Grantor*) has applied for a Permit (DEQ File Number \_\_\_\_-\_\_\_\_-\_\_\_\_-P), pursuant to Part 303, to authorize activities that will impact regulated wetland. The DEQ evaluated the permit application and determined that a permit could be authorized for certain activities within regulated wetlands provided certain conditions are met, and

As a condition of the above-referenced permit, Grantor (*on behalf of Permittee, if applicable*) has agreed to grant the DEQ a Conservation Easement that protects the wetland mitigation site and/or the remaining wetlands on the property and restricts further development to the area legally described in Exhibit B. The Conservation Easement (the Easement Premises) consists of approximately \_\_\_\_\_ acre(s). A survey map depicting the Easement Premises is attached as Exhibit C. The DEQ shall record this Agreement with the county register of deeds.

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

### COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

1. The purpose of this Agreement is to protect the functions and values of existing or established wetlands and its natural resource values on the Easement Premises, consistent with the Permit, and the protection of the benefits to the public derived from wetlands and integral habitat, by requiring Grantor to maintain the Easement Premises in its natural and undeveloped condition.

2. Except as authorized under DEQ Permit Number \_\_\_\_\_-P, issued on \_\_\_\_/\_\_\_\_/20\_\_\_\_ or as otherwise provided in this Agreement, Grantor shall refrain from, and prevent any other person from, altering or developing the Easement Premises in any way. This includes, but is not limited to:
  - a) Alteration of the surface topography;
  - b) Creation of paths, trails, or roads;
  - c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended;
  - d) Dredging, removal or excavation of any soil or minerals;
  - e) Drainage of surface or groundwater;
  - f) Construction or placement of any structure;
  - g) Plowing, tilling, mowing or cultivating the soils or vegetation;
  - h) Alteration or removal of vegetation, including the planting of non-native species;
  - i) Ranching, grazing, farming;
  - j) Use of chemical herbicides, pesticides, fungicides, fertilizers, spraying with biocides, larvicides or any other agent or chemical treatments, unless as part of an DEQ-approved Management Plan;
  - k) Construction of unauthorized utility or petroleum lines;
  - l) Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids or other waste materials, including accumulated vegetative debris, such as grass clippings, leaves, yard waste or other material collected and deposited from areas outside the Easement Premises;
  - m) Use or storage of automobiles, trucks or off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles;
  - n) Placement of billboards or signs, except as otherwise allowed in the Permit or this Agreement;
  - o) Use of the wetland for the dumping of untreated storm water or the directing of treated storm water to the easement premises at a volume that adversely impacts the hydrology of the wetland;
  - p) Actions or uses detrimental or adverse to water conservation and purity, and fish, wildlife or habitat preservation.
3. Cutting down, burning, destroying, or otherwise altering or removing trees, tree limbs, shrubs or other vegetation, whether living or dead, is prohibited within the Easement Premises, except with the written permission of Grantee, expressly for the removal of trees or limbs to eliminate danger to health and safety, to reduce a threat of infestation posed by diseased vegetation, invasive non-native plant species that endanger the health of native species or as otherwise provided in the DEQ-approved Management Plan for the Easement Premises.
4. Grantor is not required to restore the Easement Premises due to alterations resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable; natural causes or natural disasters, such as unintentional fires, floods, storms, or natural earth movement.
5. Grantor, Permittee or its authorized agents or representatives may enter the Easement Premises to perform activities within the Easement Premises consistent with the Permit or the mitigation requirements. Grantor or Permittee shall provide 5 days notice to the Grantee of undertaking any mitigation activity, even if the mitigation project has been conceptually approved. Any activities undertaken pursuant to the Permit, a mitigation project or this Agreement, shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.
6. Grantor warrants that Grantor has good and sufficient title to the Easement Premises described in Exhibit B.
7. Grantor warrants that any other existing interests or encumbrances in the Easement Premises have been disclosed to the DEQ.
8. Grantor warrants that to the best of Grantor's knowledge no hazardous substances or hazardous or toxic wastes have been generated, treated, stored, used, disposed of or deposited in or on the property.

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

## LIST OF ATTACHED EXHIBITS

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

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

GRANTOR:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



GRANTEE:

STATE OF MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER RESOURCES DIVISION

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

STATE OF MICHIGAN}   
 } ss   
COUNTY OF INGHAM}

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

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

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

Acting in: Ingham County, Michigan

My Commission is in \_\_\_\_\_ County, Michigan

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

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

**AFTER RECORDING, RETURN TO:**

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