



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
KALAMAZOO DISTRICT OFFICE



STEVEN E. CHESTER
DIRECTOR

February 14, 2007

Mr. John Cameron
Harbor Shores Community Redevelopment, Inc.
900 Fifth Third Center
111 Lyon Street NW
Grand Rapids, Michigan 49503

RECEIVED
FEB 15 2007

BY:.....

Dear Mr. Cameron:

SUBJECT: DEQ File Number: 06-11-0142-P
USACE File Number: 05-054-002-0
City of Benton Harbor, City of St. Joseph, Benton Charter Township;
Berrien County

The Michigan Department of Environmental Quality (DEQ), Land and Water Management Division (LWMD), has completed its initial review of your application, known as Harbor Shores Community Redevelopment, Inc. (Harbor Shores). The proposed activities require a permit under several Parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA): Part 301, Inland Lakes and Streams (Part 301); Part 303, Wetlands Protection (Part 303); and Part 31, Floodplain Authority, and Section 404 of the federal Clean Water Act.

The following outlines all of the remaining issues and details that will need to be addressed, both before a permit can be issued and as critical conditions of a permit.

Please submit a complete response to the following issues:

A. Stream enclosure (North Shore County Drain)

The DEQ has determined that in concept, it can permit the enclosure of 1,200 feet of the first order stream known as the North Shore County Drain. This is conditioned on the development of an acceptable stream mitigation plan. Questions also exist regarding the stream enclosure design.

1. Design details. There are concerns regarding the diameter of the proposed enclosure, and the potential for failure/collapse. Please submit for our review and approval:
 - a) All necessary information, data, basis of design, design calculations, etc., demonstrating that the proposed 3-foot diameter culvert is adequately sized.
 - b) Similar information/data responding to concerns expressed regarding the potential failure/collapse of the culvert.

- c) We acknowledge the cross-section you provided as "M63 Drainage Enclosure" (sheet 45). However, we also need a profile (upstream/downstream details) of the proposed enclosure. Provide specific details on the slopes, methods of construction, and methods of soil erosion control/stabilization of the proposed fill at each end of the proposed enclosure. At the upstream end, clarify or explain why sheet 7 depicts the enclosure extending 50-70 feet beyond the limits of the wetland fill.
2. Stream mitigation plan. We have reviewed the stream mitigation plan prepared by JFNew, dated September, 2006. This plan is essentially "Part 1" of the required full mitigation plan, meaning that it is primarily limited to describing the existing conditions. If the stream enclosure is permitted, **no regulated work can be performed** until a full and comprehensive mitigation plan has been reviewed and approved by the DEQ, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service. The plan must comply with all conditions listed in the enclosed December 20, 2006 letter from the EPA to the LWMD. While we understand that the full plan, providing detailed location/specifications on the mitigation sites will take considerable effort, please submit an interim report describing the potential sites that are currently being considered.
3. Financial assurance. Cost estimates for the design, construction, planting, monitoring, and all necessary acquisition or easements, must be submitted to allow the DEQ to determine the appropriate amount of financial assurance that will be required. The financial assurance mechanism is necessary in the event of a mitigation default or failure. The financial assurance must be in place before a permit can be issued. A separate assurance will be required for proposed wetland mitigation.

B. Jean Klock Park

As you know, there still remains some public controversy over the placement of golf holes in Jean Klock Park. However, the park is owned by the City of Benton Harbor and we accept the tenet that the City most-directly represents its people. Furthermore, the only LWMD-administered statute with authority for the proposed work in Jean Klock Park is Part 303. A permit is necessary for the proposed 0.27 acres of wetland fill, and for the proposed 275 feet of wetland boardwalk. In light of the overall magnitude of the Harbor Shores project, these wetland impacts are relatively small and represent minimal wetland impact. Please be advised that any permit issued by the DEQ regarding the wetland impacts within the park will not negate the need for Harbor Shores to comply with requirements of the City of Benton Harbor and the Michigan Natural Resources Trust Fund for use of the park.

C. Pending revisions:

During a recent meeting with Harbor Shores' representatives, we learned that since a major property acquisition cannot occur, significant revisions of the plans are required. These revisions may actually result in a reduction in wetland fill. It was also our understanding that, as part of relocating an electrical substation, you would need to propose approximately 0.1 acre of new wetland fill. Please provide all appropriately revised plans, cross-sections, fill areas, fill volumes, summary tables, etc.

D. Property ownership/permission

There are still a number of properties where Harbor Shores is proposing regulated impacts, but for which we have not received written permission from the owner. The DEQ can not issue a permit until Harbor Shores demonstrates ownership, written permission, or other written authorization on all properties where regulated activities are proposed. Please submit such documentation for each property listed below. These properties are listed under a numbering scheme you have provided to the DEQ. If a property is not listed, we believe the DEQ has proper documentation on file.

Properties:

16	17A	18	18A	19	20	21	23		
24	35	36	37	38	51	82	101	102	

E. State-threatened plant species:

Within the overall project area, three species of plants have been identified that are protected under Part 365, Endangered Species Protection (Part 365), of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). Data provided by your consultant, indicated the presence of the following state threatened plant species:

1. Rose-pink (*Sabatia angularis*) is present in two locations within the entire 500+ acre project area:
 - a) Jean Klock Park. Current plans submitted by Harbor Shores depict proposed golf hole #18 to be very close to this population and indicate a "No Impact Area", to avoid impact to this plant.
 - b) City of Benton Harbor property, near the Paw Paw River at Graham Avenue. Current plans do not show proposed golf course construction in the immediate vicinity of this population; however plans do depict "residential development area" in the vicinity.
2. Wild Sweet Potato (*Ipomoea pandurata*) on City of Benton Harbor property located northeast of Modern Plastics Corp. Current plans depict "residential development area" apparently overlaying this area.

3. Prairie Trillium (*Trillium recurvatum*), located northeast of the intersection of Golf Road and Higman Park Road. Current plans do not indicate any work in this vicinity because this property is not part of the Harbor Shores project.

Your agent included a January 18, 2006, letter from Lori Sargent, of the Michigan Department of Natural Resources (DNR), Wildlife Division, outlining requirements for compliance with Part 365. However, that letter was based on plans submitted with your first application (LWMD #05-11-0110-P), and pre-dated the discovery/confirmation of rose-pink in Jean Klock Park (JKP). Therefore the January 18, 2006 DNR letter is obsolete. The DEQ is awaiting a new letter from the DNR, based on your new plans, and new field investigations. At this writing, the DNR is developing a map depicting the maximum aerial extent of rose pink in JKP, based on 2006 surveys performed by four separate qualified botanists. When this map is complete, both paper and digital copies will be forwarded to your agents.

The DEQ cannot issue a permit for an activity that would be otherwise unlawful. Therefore, before the permit can be issued, we will require a new letter from DNR Wildlife Division, addressing compliance with Part 365. This will require you to submit to the DNR (copy to DEQ) detailed plans for all locations where the Harbor Shores project proposes work near protected species.

F. Wetland mitigation:

The DEQ has reviewed the Compensatory Wetland Mitigation Plan, completed by JFNew, dated August 11, 2006. That document refers to a Wetland Delineation Report, completed by Abonmarche Consultants, Inc., dated June, 2005. For the record, numerous modifications were made to this delineation before being approved by the DEQ. In order to approve the mitigation plan, several requirements must be fulfilled.

Selected pages of the mitigation plan have been "marked up" and enclosed. Please make the following necessary additions and changes, and re-submit the plan.

1. Site-specific plans and cross-sections. These are required for each proposed mitigation site, at a usable scale, and with additional information as noted on the enclosure. In areas where a golf hole is intended to "carry over" a mitigated wetland (e.g., proposed hole 8), water depths must be deep enough to prevent tall, woody vegetation.
2. Ownership. For each mitigation site, submit written documentation of ownership, including the permission of each landowner (if not owned by Harbor Shores).
3. Financial assurance. Cost estimates for the design, construction, planting, monitoring, and all necessary acquisition or easements must be submitted to

allow the DEQ to determine the appropriate amount of financial assurance that will be required. The financial assurance mechanism is necessary in the event of a mitigation default or failure. The financial assurance must be in place before a permit can be issued.

4. Conservation easement. A conservation easement will be required over all mitigated wetlands and potentially additional wetlands. The plans submitted with your revised mitigation plan must clearly depict areas to be placed under conservation easements.
5. Performance standards; Monitoring. These must be consistent with those that are standard conditions of all DEQ wetland mitigation permits. Standard requirements are enclosed.
6. Three other minor revisions, additions, and corrections are necessary, as noted on the enclosure.

G. Additional/pending regulated impacts:

It is the DEQ's understanding that, as part of the Michigan Natural Resources Trust Fund (MNRTF) parkland mitigation requirements, associated with the pending conversion of Jean Klock Park, Harbor Shores will be proposing additional regulated impacts to wetlands, floodplains, and the Paw Paw River. It is not possible to add those impacts to your existing application. However, before the DEQ can make a final permit decision, we must know the extent of all of the expected regulated activities, to avoid "piecemealing" of impacts. Therefore please submit conceptual plans and approximate quantities for all potential work that will be required to satisfy the MNRTF conversion. This should include the location and estimated linear feet/width of boardwalks in wetlands or floodplains; location and estimated linear feet/width of fill paths in wetlands/floodplains; location and approximate dimensions for any other structures such as river overlooks, boat launches, pedestrian bridges over rivers/streams; etc. You are strongly encouraged to consider the maximum impacts that will be necessary in order to optimize the public use of the potential parkland mitigation parcels. We suggest you even consider constructing an educational boardwalk through one of your proposed wetland mitigation sites for use as an educational/interpretive trail.

H. Nonpoint source pollution/stormwater:

The DEQ and other parties are concerned about the potential impacts of the proposed golf course (and other associated projects) on water quality and wildlife habitat. These concerns stem primarily from nonpoint sources and the potential for discharge of nutrients, pesticides/chemicals, sediments, etc. into the Paw Paw River and wetlands. A permit cannot be issued unless Harbor Shores demonstrates that the project will not result in violation of water quality standards, waterbody

designated uses, or otherwise unlawfully impair waters of the state. The DEQ will need plans and details on the design, construction and management phases of the project.

1. Design. Before a permit can be issued, the DEQ needs assurance that the golf course and associated projects will be designed in a manner that will not unlawfully contribute nonpoint source pollution to waters of the state. The goal is to avoid direct discharges of stormwater to waterbodies and wetlands. At a minimum, stormwater must be detained to treat the "first flush" (first ½ inch of runoff from a site) for a minimum of 24 hours, before discharging into streams or wetlands.

Your application states that stormwater will be detained before being discharged to surface waters or wetlands. However, it did not state whether additional areas would be required for such stormwater detention; and if so, where those stormwater management practices would be located. Please confirm that no additional construction in wetlands or streams will be necessary, beyond what is currently proposed. Further, information provided in your first application stated that the turf grass areas could be limited so they will not be any closer than 50 feet of the river. As necessary, you should provide modified plans and additional, site-specific details demonstrating how this will be accomplished. (Note: The DNR recommends buffer width of 100 feet, plus 5 feet per 1% increase of slope) These plans must clearly show where natural/un-mowed vegetative buffers will be utilized.

Finally, the application does not identify the location of maintenance facilities. Revised plans must be submitted showing where maintenance facilities will be located, and that this location is acceptable relative to risks to water quality and wetlands.

2. Construction. If a permit is issued, it will be conditioned to require a comprehensive soil erosion and sedimentation control plan. Be advised, the project will require permit coverage from the Berrien County Drain Commissioner and the Water Bureau of the DEQ.
3. Management. If a permit is issued, it will be conditioned to require a comprehensive pollution prevention plan for management of the golf course. This plan must address, at a minimum, source of irrigation water, water use and conservation, fertilizer management, pesticide management, management of the natural vegetative buffers, pollution prevention at maintenance facilities, etc. This plan must be developed by a qualified firm, in consultation with local entities such as the City of Benton Harbor and the Paw Paw River Watershed Project.

4. Audubon International. In early meetings between Harbor Shores and the DEQ, there was an understanding that Harbor Shores intended to work with Michigan State University Extension, and to participate in Audubon International's programs for environmentally sensitive construction and management of golf courses. Further, our understanding is that Audubon International offers two certification programs: a) Audubon Signature program for construction of new golf courses; b) Audubon Cooperative Sanctuary program for management of established golf courses. We encourage you to work directly with this organization to develop the most environmentally sensitive design as possible.

I. Hole-specific details:

Certain holes are critical due to their proximity to wetlands (both existing and mitigation), streams, the Paw Paw River, and steep slopes. In these locations, the existing plans lack the details necessary to demonstrate the critical features will not be impacted. Please submit additional information and revised plans according to enclosed Table 1.

J. Miscellaneous/Other:


Please respond appropriately (i.e., letter and/or corrected/revised plans) to the following:

1. The enclosed letter from New Products Corporation dated January 18, 2007, expressed concerns about how the overall Harbor Shores project may affect flooding at their facility at the corner of Klock Road and North Shore Drive. They were particularly concerned with existing berms and pumps along Klock Road.
2. A table provided in your application states the bottom beam elevation of all bridges over the Paw Paw River will be 588.1, but the cross-section (sheet 46) shows the bottom beam elevation as 588.32. Please clarify.
3. Application sheet 18 states that the cart path will pass under North Shore Drive Bridge. However, no details were provided. Please confirm that the cart path will be constructed with no floodplain obstructions, fill or other regulated impacts. If this is not the case, provide new/revised plans and supporting materials.
4. Be advised of a potential conflict with city/county infrastructure in at least two locations: a) Hole 18 is proposed over the backwash discharge pipe of the Benton Harbor water intake plant; b) The Practice Area is proposed over Sawyer County Drain.

Except as specifically noted, where this letter requires submittal of revisions, additional information, data, etc., those materials must be received in this office **within 30 days** of your receipt of this letter. If all the required information and revisions cannot be submitted by this deadline, Harbor Shores may need to temporarily withdraw the application, or extend the processing period. An application may be reactivated upon DEQ receiving all of the necessary information and revisions within six months from the date of withdrawal.

Thank you for your cooperation. If you have questions, please contact me at the number below.

Sincerely,



Kameron J. Jordan
District Supervisor
Land and Water Management Division
269-567-3565

Enclosures:

1. EPA letter dated December 20, 2006
2. "Marked up" wetland mitigation plan, selected pages
3. Wetland mitigation performance standards and monitoring requirements
4. Table 1
5. Letter from New Products Corporation

cc:

City of Benton Harbor
City of St. Joseph
Benton Charter Township
Mr. Roger Zilke, Berrien County Drain Commissioner
Southwest Michigan Planning Commission
Mr. Tom Allenson, USACE, Detroit
Mr. Charles M. Simon, USACE, Detroit
Mr. Kevin Pierard, USEPA, Chicago
Ms. Sue Elston, USEPA, Chicago
Mr. Robert McFeeter, Evergreen
Mr. Jeffery Noel, Whirlpool Corporation
Mr. Joseph von Wahle, JFNew
Mr. Mark Walker, Abonmarche Consulting
Ms. Lori Sargent, MDNR, Wildlife, Lansing
Mr. Todd Hogrefe, MDNR, Wildlife, Lansing
Ms. Maureen Houghton, MDNR, Grants Management, Lansing
Mr. Stanley F. Pruss, MDEQ, Lansing
Ms. Kimberly Fish, LWMD, Lansing
Ms. Peg Bostwick, LWMD, Lansing