

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND
ENERGY,

Plaintiff,

No. 23-0183-CE

HON. JAMES S. JAMO

v

CHESTERFIELD 5, LLC and
CHRISTOPHER C. COUSINO,

Defendants.

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CONSENT JUDGMENT

At a session of said Court held in the City of Lansing,
Ingham County, Michigan on June 3, 2024.

PRESENT: HONORABLE JAMES S. JAMO

This matter having come to be heard upon the complaint of the above-named
Plaintiff, and the Parties having stipulated to this Judgment;

IT IS HEREBY STIPULATED:

1. Plaintiff Michigan Department of Environment, Great Lakes, and Energy (EGLE) is charged with enforcement of Part 303, Wetland Protection, of the Natural Resources and Environmental Protection Act (NREPA), MCL 324.30301 *et seq.* and the rules promulgated thereunder.

2. Defendant Chesterfield 5, LLC is a limited liability company formed under MCL 450.4101 *et seq.*, the Michigan Limited Liability Company Act, with a registered address of 12955 23 Mile Road, Shelby Township, Michigan 48315.

3. Defendant Christopher C. Cousino is an individual who resides at 3941 Quarton Road, Bloomfield Hills, Michigan 48302 in Oakland County, Michigan.

4. Part 303 of NREPA prohibits any person from taking certain actions in regulated wetland without a permit issued by EGLE; these actions include, but are not limited to: depositing or permitting the placement of fill material; dredging, removing, or permitting the removal of soil or minerals; constructing, operating, or maintaining any use or development; and draining surface water. MCL 324.30304(a)-(d).

5. At all times relevant hereto, Chesterfield 5, LLC owns and/or owned a parcel of real property located in Macomb County, Michigan at 17095 23 Mile Road, Macomb Township, Michigan 48942, with tax parcel ID number 20-08-17-300-001 (the Property).

6. At all times relevant hereto, Christopher C. Cousino was an agent for Chesterfield 5, LLC.

7. The Parties agree that this Court has jurisdiction over this matter pursuant to MCL 324.30316(1) and MCL 600.605, and jurisdiction over the Defendants pursuant to MCL 600.705 and MCL 600.731.

8. The Parties agree that venue is proper in this Court pursuant to MCL 324.30316(1).

9. EGLE alleges that, between July and October of 2018, Defendants violated Part 303 of NREPA at the Property by dredging, ditching, removing soil from, draining surface water from, and constructing, operating, and maintaining a use in regulated wetland on the property, in the areas identified as wetland by EGLE in the attached Exhibit A, in violation of MCL 324.30304(a)–(d).

10. EGLE further alleges that the amount of wetland impacted by these violations is approximately 18.5 acres, and the areas of impact are shown on the attached Exhibit A.

11. Defendants deny EGLE's allegations and do not admit liability in this matter, including the depictions or extent of alleged wetlands designated in Exhibit A.

12. The Parties agree that settlement of this action without further litigation is in the best interests of the Parties and in the public interest.

13. In order to resolve this action, Defendants agree to do the following:

- a. No later than June 15, 2025, Defendants will submit to EGLE, for EGLE's approval, a restoration plan prepared by a professional wetland consultant, which will set forth a plan to

restore, or create, 15 acres of wetland within the areas identified as wetland by EGLE in the attached Exhibit A.

- b. EGLE shall promptly review Defendants' restoration plan. Defendants' restoration plan must be approved by EGLE, and EGLE's approval shall not be unreasonably withheld, conditioned or delayed. In no event shall EGLE take more than sixty (60) days to review and reject, modify, or approve the restoration plan.
- c. Unless EGLE's modification or rejection of the restoration plan causes an unreasonable delay, restoration must be complete no later than 2 years from the entry of this Consent Judgment, however the restoration may be delayed until the next growing season if all parties agree in writing sixty (60) days ahead of time that a delay is appropriate given the timing of the entry of this Consent Judgment or the approval of the restoration plan. Defendants shall notify EGLE at least 7 days prior to commencement of restoration activities, and no later than 7 days after completion of restoration activities.
- d. Defendants shall monitor the restored wetlands for a period of 5 years to ensure that the wetland reestablishes itself, and to control for invasive plant species. The monitoring shall comply with EGLE's wetland monitoring requirements, which are set

forth in the attached Exhibit B. Should the restored wetland area fail to demonstrate satisfactory progress toward a self-sustaining wetland system as designed, Defendants shall assess the problem(s) and identify the probable causes, develop reasonable and necessary corrective measures, and upon WRD approval, immediately implement the corrective measures.

- e. Chesterfield 5, LLC may elect to not develop the property within the time to complete restoration, and in that case, it will restore the full 15 acres within 2 years of the execution of this Consent Judgment, as required by paragraph 13a. However, if Chesterfield 5, LLC decides to move forward with development anytime within the next two years, it will first apply to EGLE for a Level 3 wetland identification on the Property pursuant to EGLE's Wetland Identification Program, as set forth in Mich Admin Code, R 281.924 before submitting any future application for a Part 303 permit at the Property. Chesterfield 5, LLC may submit this application in either 2024 or 2025, but in either case, it shall submit the application no later than June 15 of either year.
- f. Upon receipt of the aforementioned Wetland Identification Program application as set forth above, EGLE shall complete the wetland identification on the Property no later than June 30

of the year in which the application is received. If Chesterfield 5, LLC submits an application later in the year than June 15, then EGLE may complete the wetland identification at a time of its choosing within the growing season, but in any event no later than June 30 of the following year.

- g. Chesterfield 5, LLC shall provide EGLE access to the Property and make its wetland consultant available at the time EGLE conducts the aforementioned wetland identification.
- h. After EGLE's wetland identification is complete and a letter is issued to Chesterfield 5, Chesterfield 5 may apply for a permit to conduct a project on the Property based upon the wetland acreage identified in that WIP. The Parties agree and understand that EGLE makes no representation that any such permit application will be approved by EGLE; rather, EGLE will process the permit application in good faith and in the same manner that it processes all permit applications under Part 303 of NREPA and the associated administrative rules. In no event shall EGLE use this settlement, or any allegations contained within EGLE's violation notices, enforcement notices issued before commencement of its suit or contained in its complaint that are the subject of this settlement, as a basis for denying a

permit or including unreasonable or non-standard conditions in a permit should one be issued.

- i. If EGLE issues a permit to Chesterfield 5, LLC for the Property, any portion of the wetlands identified by EGLE in the attached Exhibit A and proposed for restoration in Defendant's restoration plan will not need to be restored. In that event, Defendants will restore only the remaining balance of the 15 acres as identified in the restoration plan.
- j. Any wetland impacts authorized by a permit issued by EGLE to Chesterfield 5, LLC for the Property may be mitigated at what is known as the Chartier Road Mitigation Bank, provided that there are sufficient credits approved and released in that mitigation bank as of the date the EGLE countersigns a permit. If the credits have not been released at the Chartier Road Mitigation Bank, before EGLE countersigns any permit, Chesterfield 5, LCC will obtain a standard EGLE financial assurance per permit conditions on a form provided by EGLE, which can be released when the bank credits at the Chartier Road Mitigation Bank are released and assigned to the authorized EGLE permit. If insufficient credits are available as set forth above, Defendants shall mitigate the balance of any

mitigation requirement in accordance with EGLE's standard mitigation guidelines.

- k. Any mitigation required of Defendants shall be completed at the mitigation ratios set forth in the Part 303 administrative rules, and shall not be subject to after-the-fact mitigation ratios.
- l. The above-described wetland identification process and permit application process shall not delay or postpone Defendants' two-year deadline for completion of restoration except in the event that EGLE issues a wetland permit to Chesterfield 5, LLC, for the Property, in which case Defendants may commence restoration at the start of the next growing season.
- m. Defendants shall pay to EGLE a civil penalty in the amount of \$300,000.00. This civil penalty may, at Chesterfield 5's discretion be paid on an expedited schedule or be paid in three installments of \$100,000.00 each, with the first installment due no later than 60 days after the entry of this Consent Judgment, the second installment due no later than one year thereafter, and the third installment due no later than one year thereafter. These payments shall be made by check payable to the "State of Michigan" with the settlement identification number "WRD40281" noted on the check, and mailed to:

EGLE Cashier
Accounting Services Center
P.O. Box 30657
Lansing, MI 48909-8157

14. All actions taken by the Parties pursuant to this Consent Judgment shall be performed in accordance with all applicable local, state, and federal laws.

15. Failure by Defendants to comply with the terms of this Consent Judgment shall be deemed a violation of Part 303 of NREPA and shall be considered sufficient grounds for EGLE to seek enforcement of this Consent Judgment through the following mechanisms:

- a. Proceedings in Ingham County Circuit Court to show cause why Defendants should not be found in contempt of court;
- b. Stipulated penalties in the amount of \$100.00 per day of violation;
- c. Any other remedy available under the law.

16. This Consent Judgment is binding on Defendants and any successors or assigns. No change or changes in the Defendants' legal status including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter Defendants' obligations under this Consent Judgment. In the event that Chesterfield 5, LLC reorganizes or merges with any other prior to the completion of activities required in this Consent Judgment, its obligations under this Consent Judgment shall pass to the reorganized or newly formed entity.

17. Defendants are jointly and severally liable and responsible for compliance with the terms of this Consent Judgment and shall ensure that they, their contractors, subcontractors, consultants, and/or employees perform all activities required by this Consent Judgment in accordance with the terms of this Consent Judgment and in accordance with any applicable local, state, or federal laws.

18. EGLE may, at its own expense, record this Consent Judgment with the Register of Deeds for Macomb County.

19. Entering into this Consent Judgment shall not in any way inhibit Defendants' ability to apply for and receive other future permits that are consistent with applicable law, nor shall this Consent Judgment in any way inhibit EGLE's ability to review and approve or deny any future permit applications it receives from Defendants in accordance with applicable law.

20. This Consent Judgment resolves EGLE's claims as set forth in: any violation notice or enforcement notice issued to Chesterfield 5, LLC or Christopher Cousino related to the Property prior to the entry of this Consent Judgment; its complaint; or its first amended complaint. This Consent Judgment also resolves any claim that arises out of the same transactions or occurrences that was the subject matter of the above mentioned violation notices, enforcement notices, complaint, or first amended complaint..

21. This Consent Judgment does not limit or affect the rights of any Party against third parties.

22. Should any provision of this Consent Judgment be declared by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions shall remain in full force and effect.

23. This Consent Judgment, including any attached exhibits, shall not be modified except by written agreement of the Parties and, if a modification constitutes a material change, by Order of the Court.

24. Defendants shall perform their obligations under this Consent Judgment within the stated time limits, unless performance is prevented or delayed by a "Force Majeure" event. For the purposes of this Consent Judgment, a Force Majeure event is an occurrence arising from causes not reasonably preventable and beyond the control and without fault of the Defendants, such as an Act of God, untimely delay on the part of EGLE, or acts of third parties that could not have been avoided or overcome by Defendants' due diligence. Defendants shall promptly notify EGLE in writing of any such Force Majeure event, and shall undertake all reasonable measures to avoid or minimize delay due to such events.

25. This Consent Judgment shall terminate upon written request of Defendants and written approval of EGLE, along with the approval of the Court, through the issuance of a Satisfaction of Judgment.

26. Prior to the termination of the Consent Judgment under Paragraph 24, this Court shall retain jurisdiction over this action for the enforcement of this Consent Judgment's terms.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that in compliance with MCR 2.602(A)(3), this Court finds that this decision resolves the last pending claims and closes the case.

JUDGE JAMES S. JAMO

Hon. James S. Jamo
Circuit Court Judge


STIPULATION

The parties hereby stipulate to the entry of the forgoing Consent Judgment.

Notice and hearing on entry of the above order is waived.

FOR PLAINTIFF:


Michigan Department of Environment, Great Lakes, and Energy

By: 
Phil Roos, Director
Department of Environment,
Great Lakes, and Energy

Dated: May 31, 2024

Approved as to form:


Michigan Department of Attorney General

By: 
Daniel P. Bock (P71246)
Echo Aloe (P86363)
Assistant Attorneys General
Environment, Natural Resources,
and Agriculture Division
Attorneys for Plaintiff

Dated: May 10, 2024


FOR DEFENDANTS:

Chesterfield 5, LLC

By: 
Gregory Iacobelli

Dated: May 9, 2024

Christopher C. Cousino, Individually

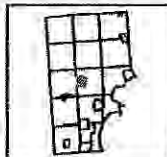

Christopher C. Cousino

Dated: May 8, 2024



50-23 Mile & Electric Ave
 Macomb Twp
 Macomb County

- EGLE Data Point
- Wetland Areas
- Ditches
- New Ditch
- Approximate Property Boundary



EGLE ENVIRONMENTAL & LAND MANAGEMENT SERVICES, LLC
 IMAGE: 2022

EXHIBIT B

Wetland Restoration Monitoring Requirements

WETLAND RESTORATION AND MONITORING REPORT
REQUIREMENTS

Defendants shall monitor the wetland restoration for five (5) years as set forth in the Consent Judgment. Additional monitoring may be required if the wetland restoration fails to meet performance standards after the five-year monitoring period. A monitoring report, which compiles and summarizes all data collected during the monitoring period, shall be submitted annually by Defendants. Monitoring reports shall cover the period of January 1 through December 31 and be submitted to the EGLE prior to January 31 of the following year. A qualified individual able to identify vegetation to genus and species shall conduct the following activities and provide the information collected in the monitoring reports.

- a. Measure inundation and saturation at all staff gauges, monitoring wells, and other stationary points shown in the restoration plan monthly during the growing season. Hydrology data shall be measured and provided at sufficient sample points to accurately depict the water regime of each wetland type.
- b. Sample vegetation in plots located along transects as identified in the approved/modified restoration plan once between July 15 and August 31. Woody vegetation may be sampled earlier in the growing season to allow for accurate counts. The minimum number of sample plots shall be no fewer than fifteen (15). Sample plots shall be located on the sample transect at evenly spaced intervals.

The herbaceous layer (all nonwoody plants and woody plants less than 3.2 feet in height) shall be sampled as a 3.28-foot by 3.28-foot (1 square meter) sample plot. The Shrub and tree layer shall be sampled using a 30-foot radius sample plot. The data recorded for each herbaceous layer sample plot shall include a

list of all living plant species, and an estimate of percent cover in five percent intervals for each species recorded, bare soil areas, and open water relative to the total area of the plot. The number and species of surviving, established, and free-to-grow shrubs shall be recorded for each 30-foot radius plot.

Provide plot data and a list of all plant species identified in the plots and otherwise observed during monitoring. Data for each plant species must include common name, scientific name, wetland indicator status from the most recent U.S. Army Corps of Engineers "National Wetland Plant List", and whether the species is considered native according to the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001). Nomenclature shall follow *Michigan Flora*, which can be found at www.michiganflora.net.

The location of sample transects and plots shall be identified in the monitoring report on a plan view. Sample transects shall be permanently staked at a frequency sufficient to locate the transect in the field.

- c. Delineate any extensive (greater than 0.01 acre in size) open water areas, bare soil areas, areas dominated by invasive species, and areas without a predominance of wetland vegetation, and provide their location on a plan view.
- d. Delineate all wetland plant communities and provide their location on a plan view. Forested and sScrub-shrub wetland plant communities shall be differentiated between areas that meet the performance standard of 300 free to grown trees and/ or 300 free-to-grow shrubs per acre and areas that have been planted in trees and shrubs that do not meet the 300 free-to-grow performance standard.
- e. Document any sightings or evidence of wading birds, songbirds, waterfowl, amphibians, reptiles, and other animal use (lodges, nests,

tracks, scat, etc.) within the wetland noted during monitoring. Note the number, type, date and hour of the sightings and evidence.

- f. Provide one-time photographic documentation during restoration work of the placement of at least six (6) inches of high-quality clean topsoil (or the existence of suitable topsoil where applicable).
- g. Inspect the site, during all monitoring visits and inspections, for oil, grease, man-made debris, and all other contaminants and report the findings. Rate (e.g., poor, fair, good, or excellent) and describe the water clarity in the Wetland and Tree Restoration Area.
- h. Provide annual photographic documentation of the development of the Wetland and Tree Restoration Area during vegetation sampling from permanent photo stations located within the Wetland and Tree Restoration Area. At a minimum, photo stations shall be located at each sampling plot. Photos must be labeled with the location, date photographed, and direction.
- i. Provide the number and type of habitat structures placed and representative photographs of each structure type. Photo document decay or movement of structures over the monitoring period.
- j. Provide a written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring results. This summary shall include a calculation of the acres of each wetland type established, a plan view drawing depicting each ecological type, and identification of all performance standards and whether each standard has been met.
- k. Provide a written summary of all the problem areas that have been identified and potential corrective measures to address them.

EGLE reserves the right to reject reports with substandard monitoring data. EGGLE will determine if the performance standards have been met. If the performance standards have not been met, EGGLE will provide a written explanation as to the basis for rejecting any report and may require subsequent monitoring until performance standards have been met until final approval from EGGLE can be granted.