



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN - 5 2017

REPLY TO THE ATTENTION OF

WW-16J

CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Donald Bennett
Vice President
Bennett Quality Homes, Inc.
27899 Clemens Road
Westlake, Ohio, 44145-1141

Kenneth Andreano
Vice President
Talp, Inc.
30257 Clemens Road, Unit D
Westlake, Ohio 44145-1004

Re: Clean Water Act Administrative Compliance Order on Consent **CWA-05-2017-0009**

Dear Messrs. Bennett & Andreano:

The enclosed copy of the Final Administrative Compliance Order on Consent (ACO) is provided pursuant to Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The ACO establishes actions you agree to complete to address alleged violations of section 301 of the CWA, 33 U.S.C. § 1311. Please ensure the actions described in paragraphs 1-6 under the Order subsection of the ACO are carried out within the designated timeframes.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in blue ink that reads "Peter Swenson".

Peter Swenson, Chief
Watersheds and Wetland Branch

Enclosures

cc: Harold Keppner, Army Corps of Engineers, Buffalo District (via email)
Doug Kapusinski, Army Corps of Engineers, Buffalo District (via email)
Joseph Loucek, Ohio Environmental Protection Agency (via email)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Bennett Quality Homes, Inc.,
Westlake, Ohio; and,**

**Talp. Inc.,
Westlake, Ohio**

Respondents.

**PROCEEDING UNDER
SECTION 309(a) OF THE
CLEAN WATER ACT,
33 U.S.C. § 1319(a).**

CWA-05-2017-0009



FINDINGS OF VIOLATION AND COMPLIANCE ORDER ON CONSENT

The following FINDINGS are made and ORDER issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency, (U.S. EPA), by section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of the EPA, Region 5, who has duly re-delegated this authority to the undersigned Director, Water Division, EPA, Region 5, who hereby issues these Findings and this Order.

Bennett Quality Homes, Inc., 27899 Clemens Road, Westlake, Ohio, 44145-1141, and Talp, Inc., 30257 Clemens Road, Unit D, Westlake, Ohio, 44145-1004, (Respondents), consented to and entered into this Order for the sole purpose of settling the violations alleged in these Findings and this Order. The Respondents' consent to this Order shall not constitute an admission of any finding of fact or conclusion of law.

REGULATORY BASIS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states: "Except as in compliance with Sections 302, 306, 307, 318, 402, and 404 of the CWA, 33 U.S.C. §§ 1312,

1316, 1317, 1328, 1342, and 1344, the discharge of any pollutant by any person shall be unlawful."

2. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that: "Whenever, on the basis of any information available . . . the Administrator finds that any person is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), the Administrator shall issue an order requiring such person to comply with such section"

3. Section 404(a) of the CWA, 33 U.S.C. § 1344(a), states: "The Secretary [of the Army] may issue permits . . . for the discharge of dredged or fill material into the navigable waters at specified disposal sites."

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source. . . ."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines a "pollutant" as "dredged spoil, solid waste . . . biological materials . . . rock, sand, cellar dirt . . . and agricultural waste discharged into water."

7. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, [or] discrete fissure . . . from which pollutants are or may be discharged."

8. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" in pertinent part as "the waters of the United States . . ."

9. The term “water of the United States” means “all interstate waters [such as lakes, rivers and streams] . . .” and “[w]etlands adjacent to [interstate] waters . . .” and includes “all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . [including] intrastate lakes, rivers, streams (including intermittent streams) . . . wetlands . . . the use, degradation, or destruction of which could affect interstate or foreign commerce including any such waters . . . tributaries of [such] waters . . . [and] wetlands adjacent to [all such] waters.” 40 C.F.R. § 230.3(s).

10. “Wetlands” are defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” 40 C.F.R. § 230.3(t).

FINDINGS

11. The Respondents in this action are:

Bennett Quality Homes, Inc.
27899 Clemens Road
Westlake, Ohio, 44145-1141; and,

Talp, Inc.
30257 Clemens Road, Unit D
Westlake, Ohio, 44145-1004

12. Respondents were and remain corporations incorporated in the State of Ohio.

13. Therefore, each Respondent was and remains a “person” as defined at section 502(6) of the Act, 33 U.S.C. § 1362(5).

14. On or about March 14, 2013, Respondents owned or operated, at least in part, or in equity, seven parcels of real property all located on or around Merion Court, Westlake, Ohio,

(approximately Latitude 41.4426, Longitude -81.9645), as depicted in attached Exhibit No. 1, (“the Site”).

15. On or about March 14, 2013, Respondents, or their contractors, added rock or sand or cellar dirt or fill material from bulldozers, excavators, backhoes, and trucks, into 3.36 acres of waters on the Site.

16. The addition of rock or sand or cellar dirt or fill material into the waters of the Site constituted a “discharge of pollutants” within the meaning of the definition set forth in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

17. The rock or sand or cellar dirt or fill material constituted “pollutants” within the meaning of the definition set forth in section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The bulldozers, excavators, backhoes, and trucks constituted “point sources” within the meaning of the definition set forth in section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. The 3.36 acres of waters on the Site were “wetlands” within the meaning of the definition set forth at 40 C.F.R. § 230.3(t).

20. The wetlands on the Site were “adjacent” to Porter Creek within the meaning of the definition set forth at 40 C.F.R. § 230.3(s)(7).

21. The waters of Porter Creek were a “tributary” to Lake Erie within the meaning of the definition set forth at 40 C.F.R. § 230.3(s)(5).

23. The wetlands on the Site were also “adjacent” to Lake Erie within the meaning of the definition set forth at 40 C.F.R. § 230.3(s)(7).

24. Lake Erie was and is currently used in interstate or foreign commerce within the meaning of the definition set forth at 40 C.F.R. §§ 230.3(s)(1) and (2).

25. Therefore, the wetlands on the Site, Porter Creek, and Lake Erie were and remain “waters of the United States” within the meaning of the definition set forth at 40 C.F.R. §§ 230.3(s)(1), (5), and (7) and “navigable waters” within the meaning of the definition set forth at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

26. Therefore, Respondents discharged pollutants from a point source into navigable waters.

27. Respondents failed to obtain a CWA Section 404 Dredge and Fill Permit.

28. Therefore, Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

29. Each day Respondents’ discharged pollutants remained in the waters on the Site constituted a discrete, separate, and additional violation of Section 301 of the CWA, 33 U.S.C. § 1311

ORDER

BASED ON THE FOREGOING FINDINGS, and pursuant to the authority under Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), duly delegated to the undersigned, **IT IS HEREBY ORDERED:**

1. Respondents shall refrain from any activity at the Site which will result in placement of pollutants in forested wetlands, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and the CWA, 33 U.S.C. §§ 1251-1387.2.2.

2. Within 30 days of the effective date of this Order, Respondents must propose to U.S. EPA for approval a written and comprehensive Wetland Mitigation Plan (“Plan”) consistent with the *General Guidelines for Removal and Restoration Plans:*

Wetlands (Exhibit No. 2), and within specific milestones, timetables, and deadlines. The Plan must include a detailed description of fill removal from, and grade restoration of, at least 0.42 acre of restored wetlands on the Site, as depicted in the Respondent's December 13, 2016, wetland delineation map (Exhibit No. 3). The Plan must include that the restored wetlands be seeded immediately with, and maintained with, Ohio Prairie Nursey wetland seed mix. The Plan may allow up to 2.94 acres of the filled wetlands on the Site to remain filled pursuant to the Plan, this Order, and therefore, authorized by U.S. Army Corps of Engineers Nationwide Permit No. 32. The Plan must also include a purchase agreement for 8.9 acres of forested wetland credits from the North Coast Regional Council of Park District's In-Lieu Fee Wetland Mitigation Program. Such a Plan would be and must be consistent with the requirements of 33 C.F.R. § 332.4(c), 40 C.F.R. § 230.94(c).

3. Within 30 days of the date Respondents provide U.S. EPA with its Plan, U.S. EPA will approve or disapprove it. If U.S. EPA approves the Plan, Respondents must commence and complete mitigation activities pursuant to its Plan. If U.S. EPA determines that the Plan or its included milestones, timetables, and deadlines are unacceptable, in whole or in part, U.S. EPA will propose its milestones, timetables, and deadlines, and within 15 days Respondents must revise their Plan accordingly.

4. Within 120 days of completion of the Plan, Respondents shall submit to U.S. EPA written certification that it completed implementation of their Plan.

5. This Order shall terminate within 60 days of such written certification, unless U.S. EPA notifies the Respondents in writing that it failed to comply with the Plan

and articulates those failures. If U.S. EPA timely notifies the Respondents they failed to comply with their Plan, Respondents shall respond within 60 days.

6. Respondents must provide all required and relevant submittals via regular U.S. Postal Service to the following recipient:

Marco Finocchiaro, Enforcement Officer
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

U.S. EPA reserves any rights to use the information requested herein in an administrative, civil, or criminal action. Respondents reserve any rights to object to the use of the information requested herein in any such administrative, civil, or criminal action.

7. Neither the issuance of this Order by U.S. EPA nor the compliance with its terms affects the Respondents' ongoing obligation to comply with the CWA or any other federal, state, or local law or regulation, nor does it preclude further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein.

8. Neither the issuance of this Order by U.S. EPA, nor consent of this Order by the Respondents, shall be deemed to relieve the Respondents of their liability for any penalty, remedy or sanction authorized to be imposed pursuant to Sections 309(b), (c), or (g) of the CWA, 33 U.S.C. §§ 1319(b), (c), or (g), for any violation of applicable requirements of the CWA. U.S. EPA specifically reserves the right to seek any or all remedies authorized under these provisions for each violation specified in this Order.

9. Violation of the terms of this order may result in further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may assess civil administrative penalties of \$16,000 per day of violation,

up to a maximum of \$177,500 under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or seek civil judicial penalties of \$37,500 per day of violation of the CWA under Section 309(b) of the CWA, 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under Section 309(c) of the CWA, 33 U.S.C. § 1319(c).

10. The Respondents' completion of the Plan and this Order resolve any and all claims for injunctive relief on behalf of U.S. EPA which arose from the alleged violations of the CWA.

11. The Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order which the Respondents may have with respect to any issue of fact or law set forth in the Order on Consent.

12. Notwithstanding the above paragraph, Respondents do not admit any statement of fact or conclusion of law in this Order. This Order shall not be construed as any admission of fact or conclusion of law.


13. The effective date of this Order is the date Complainant files it with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency.

In The Matter Of: Bennett Quality Homes, Inc., and Talp, Inc., Westlake, Ohio.
Docket Number: CWA-05-2017-0009

Respondents
Bennett Quality Homes, Inc., Westlake, Ohio

Date: 4-27-17 
Donald E. Bennett
Vice-President

Talp. Inc, Westlake, Ohio

Date: 4/27/17 
Kenneth Andreano
Vice-President

Complainant
Region 5, U.S. Environmental Protection Agency

Date: 5/30/17 
Christopher Korleski
Director, Water Division

In The Matter Of: Bennett Quality Homes, Inc., and Talp, Inc., Westlake, Ohio.
Docket Number: CWA-05-2017-0009

CERTIFICATE OF SERVICE

I certify that today I filed with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (Mail Code (C-19J)), Chicago, Illinois, 60604-3590, the original and one copy of this Clean Water Act Section 309(a) Administrative Order by Consent and served the following parties in the following manners at the following addresses a true and correct copy.

Donald Bennett
Vice-President
Bennett Quality Homes, Inc.
27899 Clemens Road
Westlake, Ohio, 44145-1141

Copy by U.S. Certified Mail
Return Receipt Requested No.

7001 0320 0005 8922 0195

Kenneth Andreano
Vice-President
Talp, Inc
30257 Clemens Road, Unit D
Westlake, Ohio 44145-1004

Copy by U.S. Certified Mail
Return Receipt Requested No.

7001 0320 0005 8922 0171

Joseph P. Koncelik
Counsel to Respondents


Copy by Electronic Mail to
joseph.koncelik@tuckerellis.com

Jeffery M. Trevino
Counsel to Complainant

Copy by Electronic Mail to
trevino.jeffery@epa.gov

Ann Coyle
Regional Judicial Officer

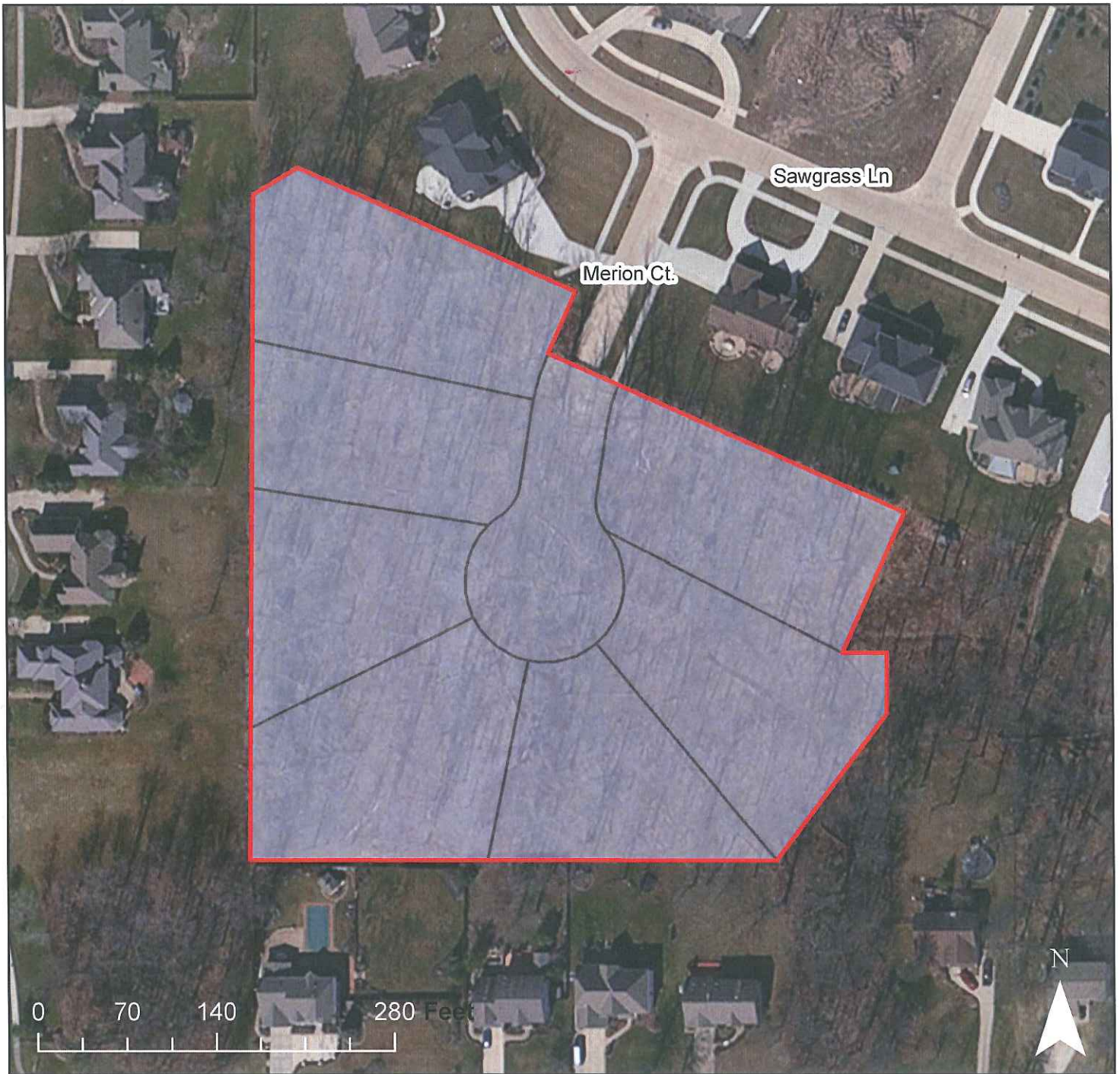
Copy by Electronic Mail to
coyle.ann@epa.gov


Kerryann Weaver
Life Scientist
Region 5
U.S. Environmental Protection Agency

6/5/2017
Dated

Exhibit No. 1

**Bennett Quality Homes, Inc. and Talp, Inc.
Country Club Estates Subdivision Phase VIII Site**



**Exhibit 1 - Site Boundary
Country Club Estates Phase VIII
Merion Court
City of Westlake, OH 44145**



Exhibit No. 2

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS: WETLANDS

The following guidelines serve as general specification for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications defining the scope and complexity of the restoration plan will depend upon the size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced among others. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, and site features, including roads, ditches, culverts, tile systems, waterbodies (including wetlands) and areas of unpermitted fill. Spot elevations are required at representative locations to discern normal undisturbed grades from fill elevations. The plan scale should be no greater than 1 inch = 40 feet.

II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replace dredge material into ditches, etc.). Indicate proposed finished grades, and the location of all erosion control features (e.g., silt fence).
- B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; routes for equipment access; the location of the disposal site for any removed fill; how the work will progress across the site; and planting specifications (i.e., temporary stockpiling of fill removed, erosion control phasing, revegetation). Generally, we require that tracked equipment be used in wetland areas.
- C. Prior to the commencement of removal work, the construction work area must be defined. Delineate the site restoration areas by installation of flagging, erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that **no** work shall occur beyond these boundaries.

III. As-Built Physical Conditions

- A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including finished grades and all pertinent ground surface and subsurface features (e.g., stratigraphy of restored soil profiles). This as-built plan shall be prepared and submitted prior to planting/seeding activities.

IV. Monitoring/Measures of Success

- A. Monitoring plans are required for a minimum of five years – longer for reforestation. Monitoring commences the first full growing season after the completion of all earth moving activities and annually for each successive growing season for the duration of the required monitoring period. Monitoring frequency can be adjusted based on the complexity of the remedial efforts required and the recovery rate shown by the site.
- B. A monitoring plan shall incorporate a simple statistical approach to assessing site flora and other measures of site restoration success (e.g., randomly placed sampling plots or transects measuring species presence, abundance (percent areal cover) and nativeness). The other parameters commonly measured and documented are surface inundation or depth to saturated soil, soil profile descriptions and site stability. A permanent photographic record shall be included as part of the monitoring plan.
- C. Depending upon the scope and complexity of the restoration efforts, general criteria to measure success (i.e., performance standards) shall be determined by USEPA. The criteria defining success and its measurement shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. Commonly, performance standards are related to revegetation and wetland status. A general provision shall be included to allow for corrective action to be taken, at the direction of USEPA, should monitoring show that criteria for success are not met.
- D. A report shall be prepared and submitted after each growing season's monitoring event(s) which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include permanent and repeatable photographic stations that represent the site. As appropriate, this report may recommend corrective action to ensure the success of restoration.

V. Inspections

- A. The plan shall provide for inspection by USEPA personnel or their designated representative prior to, during or after the completion of earthmoving activity and prior to seeding/planting, after installation of erosion control structures, after planting, and during the monitoring period.










VI. Schedule

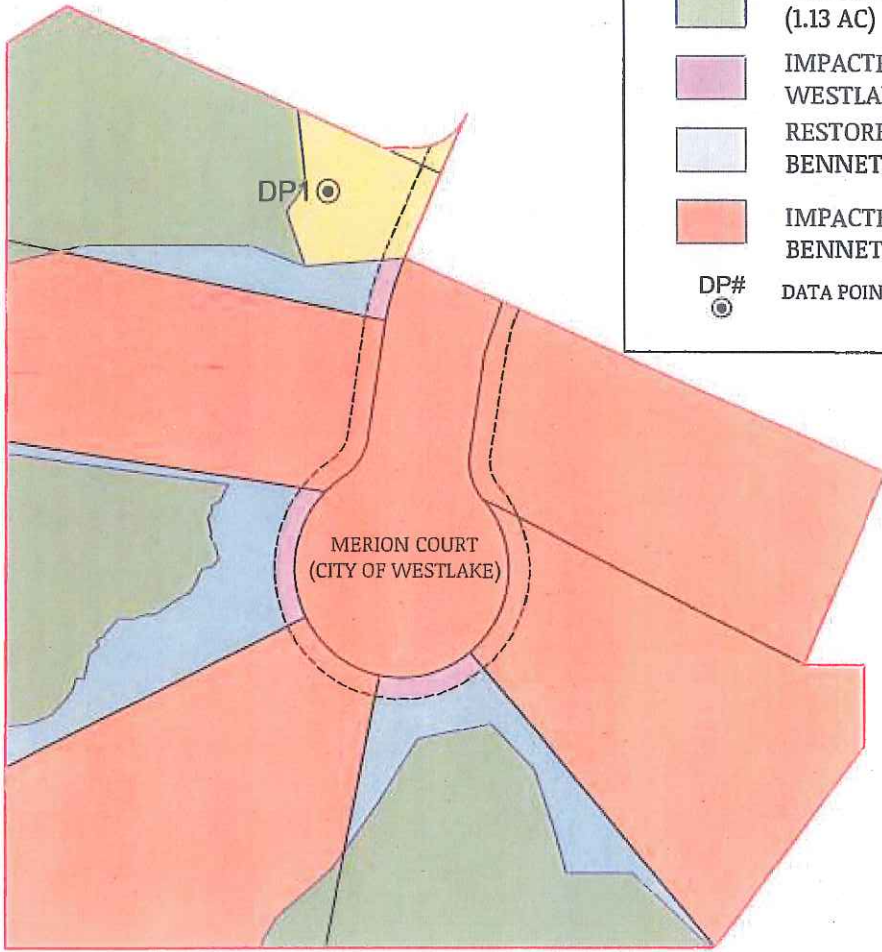
- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.

Exhibit No. 3

I:\2016\16252-03\CAD\1625203 - PROPOSED RESTORATION (WHITE) dwg

LEGEND

-  STUDY AREA (4.62 AC)
-  UTILITY EASEMENT
-  PROPERTY LINE
-  NON-WETLAND (0.13 AC)
-  UNIMPACTED WETLAND (1.13 AC)
-  IMPACTED WETLAND - WESTLAKE PROPERTY (0.05 AC)
-  RESTORED WETLAND - BENNET PROPERTY (0.42 AC)
-  IMPACTED WETLAND - BENNET PROPERTY (2.89 AC)
-  DATA POINT LOCATION



Scale: 1" = 100'

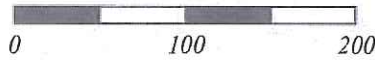


FIGURE 1A
PROPOSED RESTORATION MAP (WHITE)
COUNTRY CLUB ESTATES
CITY OF WESTLAKE, CUYAHOGA COUNTY, OHIO