IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA NEW ALBANY DIVISION

UNITED STATES OF AMERICA,))
Plaintiff,))
v.))
WESLEY PORTER,))
and))
WES PORTER DEVELOPMENT COMPANY, LLC,	Civil Action No. 4:09-cv-00170-SEB-DML
and)
TEMPLE AND TEMPLE EXCAVATING AND PAVING, INC.,)))
and))
ROBERT JASON SHUMATE,))
Defendants.)))

CONSENT DECREE

WHEREAS, the Plaintiff, the United States of America, on behalf of the United States
Environmental Protection Agency ("EPA"), filed the Complaint herein against Defendants
Wesley Porter and Wes Porter Development Company, LLC (collectively "Porter"), Temple and
Temple Excavating and Paving, Inc. ("Temple"), and Robert Jason Shumate ("Shumate")
(collectively, "Defendants"), for: (1) the discharge of pollutants into waters of the United States in
Clark County, Indiana by all Defendants without authorization by the United States Department

of the Army Corps of Engineers ("Corps"), in violation of Clean Water Act ("CWA") sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344; (2) the failure of Porter and Temple to comply with an Administrative Agreement on Consent ("AAC") issued by EPA, in violation of CWA sections 309 and 404, 33 U.S.C. §§ 1319 and 1344; and (3) the failure of Porter to comply with the terms of the After-the-Fact ("ATF") permit issued by the Corps, in violation of CWA sections 309(b) and 404, 33 U.S.C. §§ 1319(b) and 1344;

WHEREAS, the Complaint alleges that one or more of the Defendants violated CWA Sections 301(a), 309 and 404 by discharging dredged or fill material and/or controlling and directing the discharge of dredged or fill material into waters of the United States at, in and around a parcel known and platted as Deer Lake Estates located in Section 182, Township 1 South, Range 6 East within the Speed USGS Quadrangle in Clark County, Indiana (the "Sites") and more fully described in the Complaint, without authorization by the Corps, and otherwise failed to comply with the AAC and ATF permit, as more fully described in the Complaint;

WHEREAS, the Complaint seeks: (1) to enjoin the discharge of pollutants into waters of the United States in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (2) to require Defendants, at their own expense and at the direction of EPA, to restore and/or mitigate the damages caused by their unlawful activities; and (3) to require Defendants to pay civil penalties as provided in 33 U.S.C. § 1319(d);

WHEREAS, Defendant Shumate filed cross-claims against Defendants Porter and Temple relating to the same factual allegations and alleging breach of contract;

WHEREAS, this Consent Decree is intended to constitute a complete and final settlement of all claims of the United States' set forth in the Complaint and all claims of Shumate set forth in his cross-claim;

WHEREAS, the United States and Defendants agree that settlement of this case is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving the United States' claims under the CWA against Defendants in this case; and

WHEREAS, the Court finds that this Consent Decree is a reasonable and fair settlement of the United States' claims against Defendants in this case, and that this Consent Decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony upon the pleadings, without further adjudication of any issue of fact or law, and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. <u>JURISDICTION AND VENUE</u>

- 1. This Court has jurisdiction over the subject matter of this action pursuant to CWA sections 309(b) and (d) and 404(s), 33 U.S.C. §§ 1319(b) and (d) and 1344(s), and 28 U.S.C. §§ 1331, 1345, and 1355.
- 2. Venue is proper in the Southern District of Indiana pursuant to CWA sections 309(b) and 404(s), 33 U.S.C. §§ 1319(b) and 1344(s), and 28 U.S.C. § 1391(b) and (c), because the Defendants conduct business in this District, the subject property is located in this District, and the cause of action alleged herein arose in this District.
- 3. The Complaint states claims upon which relief can be granted pursuant to CWA sections 301, 309 and 404, 33 U.S.C. §§ 1311, 1319 and 1344.

II. APPLICABILITY

- 4. The obligations of this Consent Decree shall apply to and be binding upon Defendants, their officers, directors, agents, employees and servants, and their successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with any of the Defendants whether or not such person has notice of this Consent Decree. In any action to enforce this Consent Decree against a Defendant, the Defendant shall not raise as a defense the failure of any of its officers, directors, agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with the Defendant, to take any actions necessary to comply with the provisions hereof.
- 5. The transfer of ownership rights under the Restrictive Covenants, or other interest in the Restoration Sites, Mitigation Properties and/or Preservation Site (as described in Appendix A appended hereto and incorporated herein by reference) shall not alter or relieve Defendants of their obligation to comply with all of the terms of this Consent Decree. At least fifteen (15) days prior to the transfer of ownership or other interest in the Restoration Sites, the Mitigation Properties, and/or the Preservation Site, the party making such transfer shall provide written notice and a true copy of this Consent Decree to its successors in interest and shall simultaneously notify EPA and the United States Department of Justice at the addresses specified in Section X below that such notice has been given. As a condition to any such transfer, the Defendant making the transfer shall reserve all rights necessary to comply with the terms of this Consent Decree. Each deed, title or other instrument conveying an interest in any of the Restoration Sites, Mitigation Properties, or Preservation Sites Areas or all or any portion thereof, shall contain a notice stating that such property is subject to this Consent Decree and shall reference the Office of

the Clark County Registry of Deeds Book and Page Number at which the Consent Decree is recorded, as well as the reference to any restrictions applicable to the property under a Restrictive Covenant required by this Consent Decree.

III. SCOPE OF CONSENT DECREE

- 6. This Consent Decree shall constitute a complete and final settlement of all civil claims for injunctive relief and civil penalties alleged in the Complaint against the Defendants concerning the Sites. This Consent Decree further shall constitute a complete and final settlement of all claims alleged against Defendants Porter and Temple in the Cross-claims filed by Shumate in this action. Defendants waive any right to seek termination or modification of this Consent Decree based upon future decisions of any court in any case unrelated to the Defendants or this Consent Decree or the Sites, with respect to the regulatory jurisdiction under the CWA.
- 7. It is the express purpose of the parties in entering this Consent Decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, monitoring programs, and other obligations in this Consent Decree or resulting from the activities required by this Consent Decree shall have the objective of causing Defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.
- 8. Except as in accordance with this Consent Decree, Defendants and Defendants' agents, successors and assigns are enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations.

- 9. The parties acknowledge that once issued by the Corps Nationwide Permit #32, found at 77 Fed. Reg.10184, 10277-78 (February 21, 2012), will authorize any fill that was placed by Defendants as of June 30, 2008 in the areas identified as Tracts 14 (Building Site), 1, 2, 3 (Building Site), 4 (Building Site), 5, 6, 7, 10, 11, and 12, including all of Deer Lake Drive and its box culvert over the North Tributary, and one culvert crossing of the North Tributary upstream of Deer Lake Estates in Exhibit 1 (October 2004 Deer Lake Estates Subdivision Replat), to remain in place, subject to the conditions provided in the Nationwide Permit and this Consent Decree. The parties further acknowledge that Nationwide Permit #32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Consent Decree. Any such discharge of dredged or fill material necessary for work required by this Consent Decree shall be subject to the conditions of the Nationwide Permit and this Consent Decree.
- 10. This Consent Decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this Consent Decree shall limit the ability of the Corps to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this Consent Decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).
- 11. This Consent Decree in no way affects or relieves Defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.
- 12. This Consent Decree in no way affects the rights of the United States as against any person not a party to this Consent Decree.

- 13. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this Consent Decree and applicable law.
- 14. Nothing in this Consent Decree shall constitute an admission of fact or law by any party.

IV. SPECIFIC PROVISIONS

CIVIL PENALTIES

- 15. Based on the ability (or lack thereof) of Defendants to pay a civil penalty, other equitable factors and the specific circumstances of the claims in this case, Defendants shall pay no civil penalty; except that each Defendant shall be liable for penalties and other payments for non-compliance with the terms of this Consent Decree as established in paragraph 36 of this Consent Decree and as otherwise provided for in this Consent Decree.
- 16. Defendants shall make any payments that may become due and owing for non-compliance with the terms of this Consent Decree in accordance with Section IX of this Consent Decree.
- 17. Upon payment of any penalties required by this Consent Decree, Defendants shall provide written notice, at the addresses specified in Section X of this Consent Decree, that such payment was made in accordance with Paragraph 16 of this Consent Decree.
- 18. Penalty payments pursuant to this Consent Decree (including stipulated penalties provided for herein) are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

RESTORATION, MITIGATION AND PRESERVATION

- 19. Defendants shall perform restoration and mitigation projects under the terms and conditions stated in Appendix A appended hereto, said Appendix being fully incorporated herein as part of this Consent Decree. Defendants shall also comply with the terms and conditions of Appendix A pertaining to the execution and recording of Restrictive Covenants.
- 20. Upon completion of the terms and conditions of Appendix A, Defendants shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner whatsoever any location identified in Appendix A, unless it is deemed necessary to complete the monitoring and management provided for in this Consent Decree and Appendix A.
- 21. To ensure that all parcels of land identified in Appendix A remain undisturbed, Defendants shall, within fifteen (15) days of entry of this Consent Decree, record a certified copy of this Consent Decree with the Office of the Recorder, Clark County, Indiana. Thereafter, each deed, title, or other instrument conveying an interest in any property identified in Appendix A shall contain a notice stating that the property is subject to this Consent Decree and shall reference the Office of the Clark County Registry of Deeds Book and Page Number at which the Consent Decree is recorded, as well as the reference to any restrictions applicable to the property under a Restrictive Covenant required by this Consent Decree.

V. NOTICES AND OTHER SUBMISSIONS

22. Within thirty (30) days after the deadline for completing any task set forth in Appendix A of this Consent Decree, Defendants shall provide the United States with written notice, at the addresses specified in Section X of this Consent Decree, of whether or not that task has been completed.

- 23. If the required task has been completed late, the notice shall specify the date when it was completed, and explain the reasons for any delay in completion beyond the scheduled time for such completion required by the Consent Decree.
- 24. In all notices, documents or reports submitted to the United States pursuant to this Consent Decree, the Defendants shall, by signature of a senior management official, certify such notices, documents and reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering such information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

VI. RETENTION OF RECORDS AND RIGHT OF ENTRY

- 25. Until ten years after entry of this Consent Decree, Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the tasks in Appendix A, regardless of any corporate retention policy to the contrary. Until ten years after entry of this Consent Decree, Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in Appendix A.
- 26. At the conclusion of the document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA.

The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the United States with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

- 27. Until termination of this Consent Decree, the United States and its authorized representatives and contractors shall have authority at all reasonable times to enter the Defendants' premises to:
 - A. Monitor the activities required by this Consent Decree;
 - B. Verify any data or information submitted to the United States;
 - C. Obtain samples;
 - D. Inspect and evaluate Defendants' restoration and/or mitigation activities; and
 - E. Inspect and review any records required to be kept under the terms and conditions of this Consent Decree and the CWA.

The United States will make a reasonable attempt to notify Shumate prior to entry on Shumate's property. This provision of this Consent Decree is in addition to, and in no way limits or otherwise affects, the statutory authorities of the United States to conduct inspections, to require monitoring and to obtain information from the Defendants as authorized by law.

VII. DISPUTE RESOLUTION

- 28. Any dispute that arises with respect to the meaning or requirements of this Consent Decree shall be, in the first instance, the subject of informal negotiations between the United States and the Defendants affected by the dispute to attempt to resolve such dispute. The period for informal negotiations shall not extend beyond thirty (30) days beginning with written notice by one party to the other affected party or parties that a dispute exists, unless agreed to in writing by those parties. If a dispute between the United States and a Defendant or Defendants cannot be resolved by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen (14) days after the end of the informal negotiations period, the Defendant(s) files a motion with the Court seeking resolution of the dispute. The motion shall set forth the nature of the dispute and a proposal for its resolution. The United States shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant(s) shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in accordance with the objectives of this Consent Decree and the CWA, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.
- 29. If the United States believes that a dispute is not a good faith dispute, or that a delay would pose or increase a threat of harm to the public or the environment, it may move the Court for a resolution of the dispute prior to the expiration of the thirty (30) day period for informal negotiations. The Defendant(s) shall have thirty (30) days to respond to the motion and propose an alternate resolution. In resolving any such dispute, the Defendant(s) shall bear the burden of proving by a preponderance of the evidence that the United States' position is not in

accordance with the objectives of this Consent Decree, and that the Defendants' position will achieve compliance with the terms and conditions of this Consent Decree and the CWA.

30. The filing of a motion asking the Court to resolve a dispute shall not extend or postpone any obligation of Defendants under this Consent Decree, except as provided in Paragraph 38 below regarding payment of stipulated penalties.

VIII. FORCE MAJEURE

- 31. Defendants shall perform the actions required under this Consent Decree within the time limits set forth or approved herein, unless the performance is prevented or delayed solely by events which constitute a Force Majeure event. A Force Majeure event is defined as any event arising from causes beyond the control of Defendants, including their employees, agents, consultants and contractors, which could not be overcome by due diligence and which delays or prevents the performance of an action required by this Consent Decree within the specified time period. A Force Majeure event does <u>not</u> include, <u>inter alia</u>, increased costs of performance, changed economic circumstances, changed labor relations, normal precipitation or climate events, changed circumstances arising out of the sale, lease or other transfer or conveyance of title or ownership or possession of a site, or failure to obtain federal, state, or local permits.
- 32. If Defendants believe that a Force Majeure event has affected Defendants' ability to perform any action required under this Consent Decree, that Defendant or Defendants shall notify the United States in writing within fourteen (14) calendar days after the event at the addresses listed in Section X. Such notice shall include a discussion of the following:
 - A. what action has been affected;
 - B. the specific cause(s) of the delay;

- C. the length or estimated duration of the delay; and
- D. any measures taken or planned by the Defendants to prevent or minimize the delay and a schedule for the implementation of such measures.

Defendants may also provide to the United States any additional information that they deem appropriate to support their conclusion that a Force Majeure event has affected their ability to perform an action required under this Consent Decree. Failure to provide timely and complete notification to the United States shall constitute a waiver of any claim of Force Majeure as to the event in question.

- 33. If the United States determines that the conditions constitute a Force Majeure event, then the deadline for the affected action shall be extended by the amount of time of the delay caused by the Force Majeure event. Defendants shall coordinate with EPA to determine when to begin or resume the operations that had been affected by any Force Majeure event.
- 34. If the parties are unable to agree whether the conditions constitute a Force Majeure event, or whether the length of time for fulfilling the provision of the Consent Decree at issue should be extended, any party may seek a resolution of the dispute under the procedures in Section VII of this Consent Decree.
- 35. Defendants shall bear the burden of proving: (1) that the noncompliance at issue was caused by circumstances entirely beyond the control of Defendants and any entity controlled by Defendants, including their contractors and consultants; (2) that Defendants or any entity controlled by Defendants could not have foreseen and prevented such noncompliance; and (3) the number of days of noncompliance that were caused by such circumstances.

IX. STIPULATED PENALTIES

36. After entry of this Consent Decree, if a Defendant or Defendants fail to timely fulfill any requirement or obligation of the Consent Decree, including any of the requirements, tasks or obligations set forth in Appendix A, the specific Defendant or Defendants who has failed to fulfill the requirement shall pay a stipulated penalty to the United States for each violation of each requirement of this Consent Decree as follows:

A.	Day 30 of non-compliance	\$500.00 per day
B.	For Day 31 up to and including Day 60 of non-compliance	\$1,000.00 per day
C.	For Day 61 and beyond of non-compliance	\$1,500.00 per day

Such payments shall be made within thirty (30) days after demand by the United States is made upon the specific Defendant or Defendants liable for the stipulated penalty under this section.

- 37. Any disputes concerning the amount of stipulated penalties, or the underlying violation that gives rise to the stipulated penalties, that cannot be resolved by the parties pursuant to the Dispute Resolution provisions in Section VII and/or the Force Majeure provisions in Section VIII shall be resolved upon motion to this Court as provided in Paragraphs 28 and 29.
- 38. The filing of a motion requesting that the Court resolve a dispute shall stay

 Defendants' obligation to pay any stipulated penalties with respect to the disputed matter pending
 resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall continue
 to accrue from the first day of any failure or refusal to comply with any term or condition of this

 Consent Decree. In the event that Defendants do not prevail on the disputed issue, stipulated
 penalties shall be paid by Defendants as provided in this Section.

- 39. To the extent Defendants demonstrate to the Court that a delay or other non-compliance was due to a Force Majeure event (as defined in Paragraph 31 above) or otherwise prevail on the disputed issue, the Court shall excuse the stipulated penalties for that delay or non-compliance.
- 40. In the event that a stipulated penalty payment is applicable and not made on time, interest will be charged in accordance with the statutory judgment interest rate provided for in 28 U.S.C. § 1961. The interest shall be computed daily from the time the payment is due until the date the payment is made. The interest shall also be compounded annually.
- 41. Defendants shall make any payment of a stipulated penalty by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing EPA Region 5 and the DOJ case number 90-5-1-1-18341. Payment shall be made in accordance with instructions provided to the Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Further, upon payment of any stipulated penalties, Defendants shall provide written notice of such payment, at the addresses specified in Section X of this Decree.

X. <u>ADDRESSES</u>

42. All notices and communications required under this Consent Decree shall be made to the parties through each of the following persons and addresses:

A. <u>TO EPA</u>:

(1) THOMAS J. MARTIN Associate Regional Counsel United States Environmental Protection Agency Region 5 77 West Jackson Blvd. Mail Code: C-14J Chicago, IL 60604

(2) GREG CARLSON (WW-16J)
 United States Environmental Protection Agency Region 5
 77 West Jackson Blvd.
 Chicago, IL 60604-3590

B. TO THE UNITED STATES DEPARTMENT OF JUSTICE

PERRY M. ROSEN United States Department of Justice Environment & Natural Resources Div. Environmental Defense Section P.O. Box 23986 Washington D.C. 20026-3986

C. <u>TO DEFENDANTS</u>:

For Defendant Porter: WES PORTER P.O. Box 155 Sellersburg, IN 47172 Acting Pro Se

For Defendant Temple: LARRY J. KANE, ESQ. JAMES M. HINSHAW, ESQ. Bingham Greenebaum Doll LLP 2700 Market Tower 10 West Market Street Indianapolis, IN 46204-4900 Telephone: (317)635-8900

For Defendant Shumate: 502-593-1081

TIMOTHY A. HALEY MINDY L. BOEHR Barnes & Thornburg 1313 Merchants Bank Building 11 South Meridian Street Indianapolis, IN 46204-3535

XI. COSTS OF SUIT

43. Each party to this Consent Decree shall bear its own costs and attorneys' fees in this action. Should any Defendant or Defendants subsequently be determined by the Court to have violated the terms or conditions of this Consent Decree, Defendant(s) shall be liable for any costs or attorneys' fees incurred by the United States in any action against Defendant(s) for noncompliance with or enforcement of this Consent Decree.

XII. PUBLIC COMMENT

44. The parties acknowledge that after the lodging and before the entry of this Consent Decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this Consent Decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. The Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

XIII. APPROVALS OF OTHER ENTITIES

45. Promptly upon lodging of this Consent Decree, Porter and Shumate, with Temple's assistance, will initiate and diligently continue their efforts to secure all approvals from the Drainage Board, other local or state governmental agencies, third parties, and/or agencies of the

United States government other than EPA, necessary to perform and complete the mitigation, restoration and other actions required of each of them under the terms of this Consent Decree and Appendix A. Either on its own initiative or upon request of one or more of the Defendants, EPA, in its discretion, may undertake efforts to assist Porter and/or Shumate in obtaining the necessary approvals or to secure such approvals on behalf of Porter and/or Shumate. In the event Porter, Temple or Shumate are, after the execution of this Consent Decree, prevented from performing the work or fulfilling any obligation provided for in this Consent Decree and Appendix A because of lack of approval from the Drainage Board, other local or state governmental agencies, agencies of the United States government other than EPA, and/or third parties, EPA shall, in its discretion, have the option of: (a) extending the compliance deadlines set forth herein; (b) presenting a reasonable alternative to the work or obligation which generally accomplishes the same purpose as the work or obligation for which approval could not be secured; or (c) have all claims set forth in the Complaint reinstated against the party who could not perform his/its obligations due to lack of approval.

XIV. CONTINUING JURISDICTION OF THE COURT

46. This Court shall retain jurisdiction over this action in order to enforce or modify the Consent Decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this Consent Decree. During the pendency of the Consent Decree, any party may apply to the Court for any relief necessary to construe and effectuate the Consent Decree.

XV. MODIFICATION

47. Upon its entry by the Court, this Consent Decree shall have the force and effect of a final judgment. Any modification of this Consent Decree shall be in writing, and shall not take effect unless signed by both the United States and the Defendants and approved by the Court.

XVI. TERMINATION

- 48. Except for Paragraph 20, this Consent Decree may be terminated by either of the following:
- A. Defendants and the United States may at any time make a joint motion to the Court for termination of this Decree or any portion of it; or
- B. Defendants may make a unilateral motion to the Court to terminate this Decree after each and all of the following has occurred:
 - 1. Defendants have obtained and maintained compliance with all provisions of this Consent Decree and the CWA for twelve (12) consecutive months;
 - 2. Defendants have paid all penalties and other monetary obligations hereunder and no penalties or other monetary obligations are outstanding or owed to the United States;
 - 3. Defendants have certified compliance pursuant to subparagraphs B1 and B2 above to the Court and all Parties; and
 - 4. Within forty-five (45) days of receiving such certification from the Defendants, the United States has not contested in writing that such compliance has been achieved. If the United States disputes Defendant's full compliance, this

Consent Decree shall remain in effect pending resolution of the dispute by the Parties or the Court.

Date: 1/18/13

IT IS SO ORDERED.			
Dated and entered this	day of	, 201	
			.
	United S	tates District Judge	

ON BEHALF OF THE UNITED STATES:

IGNACIA S. MORENO Assistant Attorney General Environment & Natural Resources Division

PERRY M. ROSEN

United States Department of Justice Environment & Natural Resources Div.

Environmental Defense Section

P.O. Box 23986

Washington D.C. 20026-3986

Tel: (202) 353-7792 Fax: (202) 514-8865 perry.rosen@usdoj.gov

JOSEPH. H. HOGSETT United States Attorney

JILL Z. JULIAN
Assistant United States Attorney
Southern District of Indiana
10 Market Street
Suite 2100
Indianapolis, IN
Tel: 317-226-6333

Fax: 317-226-6125

E-Mail: jill.julian@usdoj.gov

ON BEHALF OF EPA:

U.S. ENVIRONMENTAL PROTECTION AGENCY

SUSAN HEDMAN

Regional Administrator

U.S. Environmental Protection Agency

Region 5

Date: //-26-/2

Date: 11-9-12

Date: 12-6-12

THOMAS J. MARTIN

Associate Regional Counsel

U.S. Environmental Protection Agency

Region, 5 (C-14J)

77 West Jackson Boulevard

Chicago, IL 60604-3507

(312) 886-4273

ON BEHALF OF DEFENDANT PORTER:

Wes Porter and Wes Porter Development Company, LLC

P.O. Box 155

Sellersburg, IN 47172

ON BEHALF OF DEFENDANT TEMPLE AND TEMPLE EXCAVATING AND PAVING, INC.:		
INC.:		
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	Date: 11 13 12	
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Jordy 1/1 Cue	Date: 11/14/12	
LARRY J. KANE, ESQ.)		
JAMES M. WINSHAW, ESQ.		
Bingham Greenebaum Doll, LLP		
2700 Market Tower 10 West Market Street		
Indianapolis, IN 46204-4900-Telephone: (317) 63	5.8000	
indianapons, 114 40204-4900-1 cicphone. (317) 03	3-8900	
ON BEHALF OF DEFENDANT SHUMATE:		
	9 00 . 14	
ROBERT JASON SHUMATE	Date:	
•		
	Date:	
TIMOTHY A. HALEY		
MINDY L. BOEHR		
Barnes & Thornburg, LLP		
11 South Meridian Street		
Indianapolis, IN 46204-3535		
317-231-6493		
timothy.haley@BTLaw.com		

ON BEHALF OF DEFENDANT TEMPLE AT INC.:	ND TEMPLE EXCAVATING AND PAVING,
	Date:
[Pri	nt Name & Title]
LARRY J. KANE, ESQ. JAMES M. HINSHAW, ESQ. Bingham Greenebaum Doll, LLP	Date:
2700 Market Tower 10 West Market Street Indianapolis, IN 46204-4900-Telephone: (317)) 635-8900
ON BEHALF OF DEFENDANT SHUMATE	:
ROBERT JASON SHUMATE	Date: <u>//-/2-/</u> 2
TIMOTHY A. HALEX MINDY L. BOEHR Barnes & Thornburg, LLP 11 South Meridian Street Indianapolis, IN 46204-3535 317-231-6493	Date: 1/-/4-12_

timothy.haley@BTLaw.com

APPENDIX A

This Appendix and all attachments thereto are part of the Consent Decree executed by Porter, Temple and Shumate (as defined in the Consent Decree) and by the United States and is specifically incorporated as part of the Consent Decree. All actions and obligations set forth below shall be governed by the terms of the Consent Decree (which is also referred to herein as the "Agreement").

GENERAL PROVISIONS

- 1. <u>Definitions</u>: For the purposes of Appendix A and the Consent Decree, the terms set forth below are defined as follows:
- A. <u>Deer Lake Estates</u>: A 10.849-acre parcel known and platted as Deer Lake Estates Subdivision, located in Section 182, Township 1 South, Range 6 East within the Speed USGS Quadrangle in Clark County, Indiana. The Plat depicting Deer Lake Estates is attached hereto at Exhibit 1 October 2004 Deer Lake Estates Subdivision Replat.
- B. <u>Deer Lake Estates Culverts</u>: Three culverts laid beneath Deer Lake Drive and located in or near the Wetlands Restoration Area (defined below) and illustrated on the Site Map (defined below at paragraph 2).
- C. <u>Deer Lake Estates Ditch</u>: The area outlined in blue on the Site Map (defined below at paragraph 2) and generally located on the west edge of Lots 13 and 14. A culvert (one of the three referenced in paragraph 1 B above) connects the ditch segment in each Lot and allows flow to travel beneath Deer Lake Drive.

- D. <u>Deer Lake Estates Lots</u>: Lots within Deer Lake Estates that correspond to the Lots depicted on the October 2004 Deer Lake Estates Subdivision Replat which is set out at Exhibit 1.
- E. <u>Growing Season or Planting Season</u>: The period from and including April 19 to and including October 20.
- F. Porter Mitigation Property: A total of approximately 19.1 acres of land bordering the left (north) bank of the Muddy Fork of Silver Creek which is composed of: (a) a 100-foot wide riparian buffer (labeled in orange on the Site Map) running for approximately 4,000 feet along the left (north) left bank of the Muddy Fork of Silver Creek (labeled in blue on the Site Map), comprising approximately 8.1 acres; and (b) a block of approximately 11 acres of forested wetland bordering the left (north) bank of the Muddy Fork of Silver Creek (depicted on the Site Map with a dashed white line). The precise coordinates and legal description of the Porter Mitigation Property shall be based on a survey conducted by Porter after it is staked by EPA.
- G. Restrictive Covenants: The Restrictive Covenants, which shall be subject to EPA approval, shall provide permanent protection for the lands subject to the Restrictive Covenants and shall be secured as a separate legally binding document in the form generally set forth in Exhibits 3 & 4 to this Appendix. All Restrictive Covenants described herein shall be executed and recorded by Porter and Shumate pursuant to this Consent Decree with regard to their respective properties in the Office of the Recorder for Clark County, Indiana. Each Restrictive Covenant shall reference the deeds for all property to which a Restrictive Covenant attaches under the terms of this Agreement. Porter, Temple and Shumate shall, as set forth herein, be

responsible for obtaining surveys of all property for which a Restrictive Covenant_is required under this Agreement.

- H. <u>Shumate Property</u>: The area known as Lot 9, or 13125 Deer Lake Drive, at Deer Lake Estates which presently is owned by Defendant Shumate. Approximately one acre of the Shumate property will be a wetland restoration area (outlined in yellow on the Site Map (defined below at paragraph 2).
- I. Deer Lake Estates Lot 13 Wetland Creation and Restoration Area: The area outlined in yellow on the Site Map (defined below at paragraph 2), which includes the southern two thirds of Deer Lake Estates Lot 13 (the Wetland Restoration Area). The northern one-third of Deer Lake Estates Lot 13 is the Wetland Creation area and is so labeled on the Site Map.
- 2. <u>Use of the Map Attached at Ex. 2 (referred to herein as the "Site Map"):</u> A map is attached hereto at Exhibit 2 entitled "Wes Porter Restoration and Mitigation Areas." This Site Map depicts the areas described in the Consent Decree and Appendix A. All obligations with regard to land or property within Deer Lake Estates, the Porter Mitigation Property, and the Shumate Property, shall be governed by the written descriptions set forth herein and by the Site Map. To the extent there is any conflict between a written description of land referred to herein and its depiction on the Site Map, the written description shall govern.

WETLAND CREATION, MITIGATION AND RESTORATION AT DEER LAKE ESTATES

- 3. Deer Lake Estates Lot 8 Wetland Preservation Area:
- A. Porter shall execute and record the Restrictive Covenants in the form attached hereto at Ex. 3. Said Restrictive Covenants shall run with the land on the back

(northerly) approximately 3.4 acres of Deer Lake Estates Lot 8, which borders the right (south) bank of the Muddy Fork of Silver Creek. EPA shall stake the precise area to be designated for the Restrictive Covenants, including all wetlands on the lot. Porter shall perform a survey of the Restrictive Covenant area and any other Lot 8 wetlands to ascertain and mark a legal description of the Restrictive Covenant area and Lot 8 wetlands that corresponds to the area staked by EPA.

B. Whenever Porter or any subsequent owner or holder of Deer Lake Estates Lot 8 seeks to transfer or sell Lot 8 or any portion thereof, they shall affirmatively communicate to all potential transferees and purchasers that wetlands exist on Lot 8 and they shall provide a copy of this Consent Decree, including the Restrictive Covenants on Lot 8, and the wetland boundaries to said transferee or purchaser.

4. Deer Lake Estates Lot 13:

- A. Porter shall execute and record the Restrictive Covenants in the form attached hereto at Ex. 3. Said Restrictive Covenants shall run with the land for Deer Lake Estates Lot 13.
- B. Whenever Porter or any other subsequent owner or holder of Deer Lake Estates Lot 13 seeks to transfer or sell Lot 13 or any portion thereof, they shall affirmatively communicate to all potential transferees and purchasers that wetlands exist on Lot 13 and they shall provide a copy of this Consent Decree, including the Restrictive Covenants on Lot 13. to said transferee or purchaser.
- C. Temple shall create wetlands in the north one-third of Lot 13 by removing surface soils to match the lowest wetland elevation in the southern two-thirds of Lot 13. All surface soils removed from Lot 13 shall be placed in an upland area.

- D. Temple shall take the following steps in the Wetland Restoration Area (outlined in yellow on the Site Map), in the southern two-thirds of Deer Lake Estates Lot 13. Temple shall remove the top 6 inches, more or less, of surface soils and rock aggregate from an approximately 15-feet wide strip adjacent to Deer Lake Drive as it runs along the east and south perimeter of the southern two-thirds of Lot 13. The material to be removed was placed in those areas during the construction of Deer Lake Drive on the east and south perimeter. This removal of soil and rock aggregate shall be performed in a manner so as to not threaten the structural integrity of Deer Lake Drive. All surface soils and rock aggregate removed from Lot 13 shall be placed in an upland area. Also, Temple shall revegetate the areas disturbed by the removal of soil, as described above, with erosion control seeding. Temple shall annually control for non native species within the revegetated areas of the Wetland Restoration Area and certify that non native species control has occurred within the Wetland Restoration Area as part of its monitoring and reporting obligations from paragraph 6.D. below but Temple shall not otherwise be required to plant trees, shrubs or herbaceous seeds in this area nor conduct any additional monitoring of this area.
- E. Temple shall place a 75-foot ditch plug in the Deer Lake Estates Ditch 100 feet above its mouth at the North Tributary (depicted in blue and labeled on the Site Map). The top elevation of the ditch plug shall be 478.14 feet above Mean Sea Level. The ditch plug may be constructed of surface soils excavated from Lot 13. All soil used to construct the ditch plug shall be compacted in six (6) inch lifts. To the extent an engineer is required to perform the work relating to the culverts and ditch plug, e.g., surveying, Temple shall provide those services.

F. On the northern third of Lot 13 (the Wetland Creation Area), Temple shall provide the seeding, planting, maintenance, reporting and monitoring of vegetation as that described in paragraph 6C, 6D, and 6E below. However, monitoring of Lot 13 to determine compliance with the revegetation standards shall be based on 3 photographs from a permanent photographic location in the Wetland Creation Area and 3 randomly placed, one square meter quadrats.

5. Deer Lake Estates Culverts:

Temple shall construct an overflow structure at an elevation of 482.5 feet above

Mean Sea Level to restrict flow into the culvert that connects the Deer Lake Estates Ditch

between Lots 13 and 14 (depicted in red on the Site Map) so that surface waters in the Deer Lake

Estates Ditch in Lot 14 are directed eastward to the three foot culvert within Lot 14's northeast

corner (depicted in white on the Site Map). The three foot culvert shall be lowered to an elevation

of 481.03 feet above Mean Sea Level. To the extent an engineer is required to perform the work

relating to the culverts, e.g., surveying, Temple shall provide those services.

PORTER MITIGATION PROPERTY

6. 19.1 Acre Restrictive Covenants:

- A. Porter shall execute the Restrictive Covenants in the form attached hereto at Ex. 3. Said Restrictive Covenants apply to approximately 19.1 acres on land bordering the Muddy Fork of Silver Creek and Deer Lake Estates and shall be recorded as a single Restrictive Covenant for all 19.1 acres.
- B. Within the area defined by an 90-foot wide strip ten (10) feet from the Muddy Fork of Silver Creek's top bank and running along the length of the approximately 8.1-

acre riparian buffer area, Temple shall form a series of concave excavations or depressions by making shallow scrapes 12 to 18 inches in depth so as to cover a total area of six (6) acres selected by Temple. For each 100-foot length of depression, a shallower area not to exceed twenty (20) feet in length may be left within the depression that is excavated to a depth of only six (6) inches, but spans the width of the depression. The outer boundaries of the concave depressions shall be irregular or sinuous in shape. At least one depression will be created on the downstream end of the 11-acre forested wetland preservation area. The six-acre area will be staked by EPA, with surveying assistance from Temple, and the grading work shall be done to EPA's specifications, but no double handling of soil, i.e., no soil replacement, shall be required. The excavated material resulting from this activity shall not prevent surface water run-off, from areas landward of the concave depressions, from entering the concave depressions, but in no instance can it be more than one foot above the current, natural grade in the 8.1 acre riparian zone, not including the 10-foot strip beginning at the Muddy Fork of the Silver Creek's top of bank. Excess soil material shall be placed outside the 8.1 acre buffer zone in an upland area, including being spread in the adjacent farm field, but not preventing surface water run-off from entering the concave depressions. After excavation, the six acres of wetland depressions shall be ripped to a depth of six (6) inches to eliminate compaction and loosen the subsoil - preparing it for planting.

C. Temple shall revegetate the 8.1 acre buffer zone to the following specifications: (a) A 50% - 50% mix of two year old and one year old certified native Indiana seedling trees on 10-foot centers at a rate of 436 seedlings/acre; (b) 30 one gallon, container grown, certified native Indiana shrubs per acre; and (c) herbaceous and erosion control seeding in areas where trees and shrubs are not planted or preexisting, at a rate of forty (40) pounds per acre

for erosion control seed and 7.5 pounds per acre for certified, native Indiana herbs. The erosion control seed shall consist of wheat, rye or oats or a combination thereof. The herb seed shall be planted at a rate of six (6) pounds of native, graminoid certified Pure Live Seeds per acre and 1.5 pounds of native forbs certified Pure Live Seed suitable for growth in sunny to partly shady moist or wetter conditions. Native herbs, seeds, trees or shrubs mean plants that evolved in North America and are not of Eurasian origin.

- D. Temple shall submit an as-built report within sixty (60) days of completing all earth work and all seeding and planting. The as-built plans shall include a horizontal survey of the wetland depressions constructed within the six-acre portion of the 8.1 acre buffer zone, including, three (3) spot elevation readings per each wetland depression (i.e., at the lowest elevation, slope, and top of bank) and invoices for all purchased trees, shrubs and herbaceous seed. In addition, Temple shall monitor site conditions and site revegetation as specified in Subparagraph E of this Paragraph 6 and submit monitoring reports to EPA at intervals of one year, three years and five years following final approval of the Consent Decree and due in EPA offices the first business day in September of any given monitoring year. Year one monitoring begins the first full growing season after earth work and seeding and planting is accomplished.
- E. Temple shall maintain the vegetation to ensure that at least 60% of the newly planted trees and shrubs survive and that invasive weed species do not exceed, on average, greater than 5% areal coverage within the 8.1 acre buffer zone. To the extent these levels are exceeded, Temple shall cure these problems in a manner that will reach the above-cited acceptable levels. Monitoring shall occur in July of each monitoring year. The monitoring report shall include photographs of each wetland depression from a permanent photographic location

that is identified in the monitoring report. The monitoring report shall also include a determination of compliance with the 60% tree/shrub survival rate and no greater than 5% invasive revegetation standards. To determine compliance with the revegetation standards, the monitoring process shall include a sampling of 30 randomly placed, one square meter quadrats, with 10 in the riparian buffer zone and 20 in the wetland depressions; except that, for Lot 13 the photographs shall be three in the Wetland Creation Area and there shall be only three (3) randomly placed sample points in the Wetland Creation Area on square meter quadrats. At each sampling point the areal cover of each species (identified by the genus and species epithet or Latin binomial) should be estimated. Across the 10 riparian zone sample points, the 20 wetland depression sample points, and the three (3) Lot 13 sampling points, the native and non-native species shall be cumulatively summed and a determination made whether greater than 5% are, on average, non-native species in the riparian zone, wetland depressions, and Lot 13 Wetland Creation Area. For trees and shrubs, the planted species must be tagged or otherwise marked for later field identification. Compliance with the tree survival standard is determined by sampling in the 100 foot riparian buffer and by counting within the Lot 13 Wetland Creation Area. For the riparian buffer within a randomly selected one-acre area, all planted and marked trees that are alive (i.e., live leaves) will be counted to determine if 60% of the 436 trees and 30 shrubs per acre have survived (i.e., 280 alive, planted trees and shrubs).

RESTORATION AND MITIGATION ON SHUMATE PROPERTY – LOT 9

7. Shumate shall execute and record the Restrictive Covenants in the form attached hereto at Ex. 4. Said Restrictive Covenants shall run with the land on the approximately one acre of wetlands on the Shumate property bordering the Muddy Fork of Silver Creek where Shumate

removed trees and otherwise filled or graded wetlands in what is currently his backyard. EPA shall stake the precise area to be designated for the Restrictive Covenants. Shumate shall perform a survey of the Restrictive Covenant area to ascertain a legal description of the Restrictive Covenant area after it is staked by EPA.

- 8. Shumate shall restore an approximately one acre forested wetland in the Restrictive Covenant area described in the previous Paragraph 7. Shumate shall first rip the soil surface to a depth of six (6) inches in the one acre wetland restoration zone. After ripping, Shumate shall revegetate the one-acre Preservation area to the following specifications: (a) A 50% 50% mix of two year old and one year old, certified, native Indiana trees at 10-foot centers or 436 per acre; (b) 30 one-gallon, container grown, certified native Indiana shrubs per acre and (c) herbaceous and erosion control seeding in areas where trees and shrubs are not planted or preexisting, at a rate of forty (40) pounds per acre for erosion control seed and at a rate of six (6) pounds of native graminoid, certified Pure Live Seeds per acre and 1.5 pounds of native forbs, certified Pure Live Seed per acre. The erosion control seed shall consist of wheat, rye or oats or a combination thereof. The herb seed shall be suitable for growth in sunny to partly shady moist or wetter conditions. Native seeds, trees or shrubs mean plants that evolved in North America and are not of Eurasian origin.
- 9. Shumate shall submit an as-built report within sixty (60) days of completing all earth work and all seeding and planting. The as-built report shall include a survey of the area restored, including the ditch plug and bank stabilization specified in Paragraph 11 of Appendix A, and invoices for all trees, shrubs and herbaceous seeds. Shumate shall monitor site conditions and site revegetation as specified in Paragraph 10 of Appendix A and submit monitoring reports to

EPA at intervals of one year, three years and five years following final approval of the Consent Decree and due in EPA offices the first business day in September of any given monitoring year. Year one monitoring begins the first full growing season after earth work and seeding is accomplished.

10. Shumate shall maintain the vegetation to ensure that at least 60% of the newly planted trees and shrubs survive and that invasive weed species do not exceed, on average, greater than 5% areal coverage within the one-acre Preservation area. To the extent these levels are exceeded, Shumate shall cure these problems in a manner that will reach the above-cited acceptable levels. Monitoring shall occur in July of each monitoring year. The monitoring report shall include four photographs of the Shumate Restoration Area from a permanent photographic location at each of the four corners of the site. The monitoring report shall also include a determination of compliance with the 60% tree/shrub survival rate and no greater than 5% invasive species revegetation standards. To determine compliance with the revegetation standards, the monitoring process shall include a sampling of 10 randomly placed, one square meter quadrats. At each sampling point, the areal cover of each species (identified by the genus and species epithet or Latin binomial) is estimated. Across the 10 sample points the native and non-native species shall be cumulatively summed and a determination made whether greater than 5% are non-native species. For trees and shrubs, the planted species must be tagged or otherwise marked for later field identification. Compliance with the tree survival standard shall be determined by counting live trees, i.e., trees with live leaves, within the one acre wetland restoration area. Within the Shumate Restoration Area, all planted and marked trees that are alive

(i.e., live leaves) will be counted to determine if 60% of the 436 trees and 30 shrubs per acre have survived (i.e., 280 alive, planted trees and shrubs).

11. Temple shall remove rock rip rap, restore and stabilize the right bank of the Muddy Fork of Silver Creek and block two ditches on the Shumate property which presently act to remove water from wetlands. Before commencing such work, Shumate shall provide EPA with his plan to stabilize the right bank of the Muddy Fork of Silver Creek, which shall be subject to EPA's approval. Each ditch shall be blocked with a 100 foot ditch plug using soil material from on-site or off-site as necessary to completely fill the ditches. Additionally, portions of the ditch may be on neighboring property and may, therefore, require approval of the separate landowner.

ADDITIONAL PROVISIONS

12. All Monitoring and Maintenance described herein shall conclude five years following the final approval of the Consent Decree, subject to EPA confirming that acceptable levels of vegetation have been maintained as required under the terms of this Agreement. If acceptable levels of vegetation have not been maintained on any restored or created wetland required under Appendix A and the Party responsible for such maintenance on such property under the terms of this Agreement fails to cure these defects within sixty (60) days (or an alternative time mutually agreed to by the Parties) of being informed in writing by EPA of said defects, that Party shall incur daily stipulated penalties as set forth in paragraph 36 of the Consent Decree until such time as the Party cures the defect. The sixty (60) days allotted for curing of defects in establishment of vegetation shall be the earliest 60 days following EPA's deficiency notice within a recognized planting season and shall be split between two planting seasons if less than 60 days remains in the current planting season at the time of receipt of EPA's deficiency

notice. Any intervening time between two planting seasons, where two seasons are needed to provide the total of 60 days allotted for curative planting, shall not count against the 60-day allotted period for curing of defects. EPA and Temple and Shumate shall agree upon the planting season(s) to be specified for purposes of this paragraph of Appendix A. The ultimate cure of the defect shall not extinguish any stipulated penalties incurred prior to the cure.

- 13. Shumate and Temple agree to (i) cooperate in the hiring of a contractor to perform all post-restoration monitoring required by this Consent Decree and (ii) split the costs of such contractor's performance of the post-restoration monitoring such that Shumate pays 1/8 and Temple pays 7/8 of the total costs of each monitoring event, based on the ratio of restored wetland areas for which each is responsible under this Appendix. Nothing in this paragraph requires (a) Shumate to perform monitoring activities that are the responsibility of Temple under this Appendix or (b) Temple to perform monitoring activities that are the responsibility of Shumate under this Appendix.
- 14. Shumate and Temple agree to cooperate, where reasonably possible, in hiring of a contractor to perform any curative measures for defects in vegetation survival required under Paragraph 12 and other provisions of this Appendix. Shumate and Temple agree to allocate the costs of such contractor's performance of such curative measures, based on the amounts and associated costs of curative measures required on the respective wetland areas for which each Party is responsible under this Appendix. Nothing in this paragraph requires (a) Shumate to perform or pay the costs of curative measures that are the responsibility of Temple under this Appendix or (b) Temple to perform or pay the costs of curative measures that are the responsibility of Shumate under this Appendix.

- 15. Nothing set forth in Paragraphs 13 or 14 of Appendix A shall be interpreted to diminish or otherwise affect the rights of the United States under the terms of the Agreement and Appendix A.
- 16. All Restrictive Covenants described herein are subject to approval of any banks or other third parties holding mortgages or other interests in the property that is the subject of the Restrictive Covenants. This Consent Decree shall not become valid and effective unless and until such approval(s) and/or a release(s) of interests held by banks or other third parties holding mortgages or other interests in the property subject to the restrictive covenants are secured in writing or unless EPA otherwise agrees in writing to an alternative process for dealing with encumbrances on the this property.
- 17. All Restrictive Covenants described herein shall be in perpetuity and shall be enforceable by the United States Army Corps of Engineers (the "Corps") or its designated agent.
- 18. All mitigation and restoration work described herein shall be done in accordance with the requirements and specifications set forth in this Consent Decree and Appendix A.
- 19. The Consent Decree and the provisions of Appendix A have no effect on owners of Deer Lake lots not specifically referred to herein. Any owners of remaining Deer Lake lots will need to determine for themselves if permits relating to wetlands are necessary to conduct work or construction on their lots or any portions thereof; except that Tracts 3 (Wetland Preservation Area), 4 (Wetland Preservation Area), 14 (Wetland Preservation Area), and Tract 8 from Exhibit 1 have jurisdictional wetlands identified on them.