

SCHEDULE OF EXHIBITS

(Amended as part of the Second Amendment to Development Agreement and Further Amended as part of the Fifth Amended Version of the Development Agreement)

- A. Legal Description of the Property
- B. Amended Project Timetable
- C. Amended Project/Concept Plan
- D. Amended Implementation Plan Document for Planned Development
- E. Amended Management Plan
- F. Habitat Enhancement and Mitigation Proposal as approved June 14, 2011
- G. Pedestrian Trail Access Easement Legal Description and Reference Drawing (to be provided by Developer)
- H. Chapter 30 Permit: Wisconsin Department of Natural Resources Revised June 14, 2011
- I. Newberry Street Exhibit Drawing
- J. Omni Associates Drawing indicating the Location of the Lift Station and Force Main
- K. Construction Stage Outline
- L. DNR Letter of Closure for Remediation of Development Site



Martenson & Eisele, Inc.

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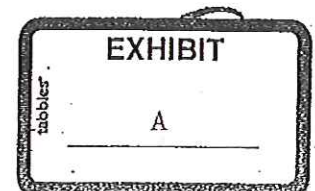
Planning
Environmental
Surveying
Engineering
Architecture

Description of RiverHeath property

Part of Blocks 55 and 56, Fourth Ward Plat, Section 25, City of Appleton, Outagamie County, Wisconsin more fully described as follows:

Commencing at the South 1/4 corner of said Section 25;
thence along the east line of the Southwest 1/4 of said Section 25,
North 00 degrees 20 minutes 22 seconds West, 822.44 feet to the point of beginning;
thence along the northwesterly right-of-way line of the Canadian National Railroad Company,
South 47 degrees 45 minutes 31 seconds West 658.01 feet;
thence along the northerly right-of-way line of Banta Court,
62.06 feet along an arc of a curve to the left having a radius of 789.86 feet with a chord which
bears North 56 degrees 46 minutes 20.5 seconds West, 62.05 feet;
thence South 47 degrees 45 minutes 31 seconds West, 62.76 feet;
thence, along the south right-of-way line of said Banta Court,
South 59 degrees 20 minutes 59 seconds East, 18.22 feet;
thence, along the south right-of-way line of said Banta Court,
44.10 feet along an arc of a curve to the right having a radius of 729.86 feet with a chord which
bears South 57 degrees 16 minutes 46.0 seconds East, 44.09 feet;
thence along said northwesterly right-of-way line of the Canadian National Railroad Company,
South 47 degrees 45 minutes 31 seconds West, 507.93 feet;
thence North 42 degrees 15 minutes 33 seconds West, 60.00 feet;
thence North 56 degrees 04 minutes 24 seconds West, 59.81 feet;
thence North 28 degrees 16 minutes 11 seconds East, 448.02 feet;
thence along the south right-of-way line of said Banta Court,
South 71 degrees 31 minutes 47 seconds East, 87.19 feet;
thence continuing along the south right-of-way line of said Banta Court,
South 59 degrees 20 minutes 59 seconds East, 137.59 feet;
thence North 47 degrees 45 minutes 31 seconds East, 62.76 feet;
thence along the north right-of-way line said Banta Court,
North 59 degrees 20 minutes 59 seconds West, 129.11 feet;
thence North 34 degrees 34 minutes 14 seconds East, 67.97 feet;
thence North 55 degrees 13 minutes 11 seconds West, 69.39 feet;
thence North 34 degrees 46 minutes 49 seconds East, 14.00 feet;
thence North 55 degrees 13 minutes 11 seconds West, 55.74 feet;
thence North 28 degrees 16 minutes 11 seconds East, 223.28 feet;
thence North 15 degrees 24 minutes 19 seconds East, 21.44 feet;
thence North 34 degrees 26 minutes 26 seconds East, 165.19 feet
to a meander corner being South 55 degrees 32 minutes 12 seconds East, 28 feet more or less
from the waters' edge of the Fox River;

Sheet 1 of 2



Continuation of Description of RiverHeath property

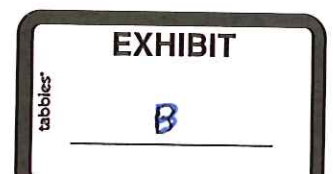
thence along a meander line,
North 17 degrees 49 minutes 48 seconds East, 213.47 feet
to a meander corner being South 55 degrees 32 minutes 12 seconds East, 12 feet more or less
from the waters' edge of the Fox River;
thence continuing along a meander line,
North 45 degrees 00 minutes 18 seconds East, 140.58 feet
to a meander corner being South 55 degrees 32 minutes 12 seconds East, 20 feet more or less
from the waters' edge of the Fox River;
thence continuing along a meander line,
North 36 degrees 33 minutes 10 seconds East, 443.35 feet
to a meander corner being South 55 degrees 32 minutes 12 seconds East, 20 feet more or less
from the waters' edge of the Fox River;
thence continuing along a meander line,
North 45 degrees 43 minutes 04 seconds East, 293.18 feet
to a meander corner being South 60 degrees 06 minutes 02 seconds East, 11 feet more or less
from the waters' edge of the Fox River;
thence along the northerly line of said Block 56,
South 60 degrees 06 minutes 02 seconds East, 130.51 feet;
thence South 01 degree 44 minutes 58 seconds West, 34.56 feet;
thence South 13 degrees 10 minutes 13 seconds West, 107.81 feet;
thence South 13 degrees 04 minutes 13 seconds West, 286.60 feet;
thence South 14 degrees 44 minutes 12 seconds West, 221.40 feet;
thence South 19 degrees 45 minutes 55 seconds West, 187.71 feet;
thence along the northerly right-of-way line of said Newberry Street,
South 34 degrees 42 minutes 45 seconds West, 69.80 feet;
thence continuing along the northerly right-of-way line of said Newberry Street,
South 47 degrees 45 minutes 31 seconds West, 1.20 feet;
thence along the east line of said Southwest 1/4,
South 00 degrees 20 minutes 22 seconds East, 80.61 feet to the point of beginning,
containing 691,760 square feet more or less (15.8 acres more or less), including all lands lying
between the meander lines and the waters' edge of the fox river and subject to all easements
and restrictions of record.

Ingress / Egress Easement:

That part of vacated Newberry Street right-of-way lying between Banta Court and the extension
of the southwesterly line of Lot 2, Block 56, Fourth Ward Plat, Section 25, City of Appleton,
Outagamie County, Wisconsin.

RiverHeath Exhibit B

Description	Approximate start	Approximate finish	Anticipated SF	Anticipated Value
Completion of clean up, demolition, and filling of industrial canal	10/15/2008	10/1/2009	NA	\$3,462,800
B4 Building "Evergreen"	6/1/2013	6/1/2014	30,000	\$6,000,000
A Townhomes	7/1/2011	11/1/2015	14,000	\$2,500,000
B5 Building "Prairie"	10/1/2015	10/1/2016	30,000	\$6,000,000
Alpha	11/1/2015	11/1/2016	65,000	\$12,000,000
B2 Building	6/1/2016	3/1/2017	5000	\$1,500,000
B3 Building	6/1/2016	3/1/2017	5,000	\$1,500,000
E1 Building	9/1/2016	4/1/2017	4000	\$2,500,000
E2 Building	9/1/2016	4/1/2017	5000	\$3,000,000
E3 Building	9/1/2016	4/1/2017	3000	\$1,500,000
D1 Building	6/1/2017	6/1/2018	60,000	\$10,000,000
F1 Building	6/1/2019	6/1/2020	30,000	\$6,000,000



BUILDING LEGEND	
A	Townhomes
B2	Restaurant
B3	Commercial - Residential
B4	Commercial - Residential
B5	Commercial - Residential
D1	Commercial - Residential
E1	Theater
E2	Restaurant
E3	Equipment Rental
F1	Commercial - Residential



EXHIBIT
C



RIVERHEATH
 SITE PLAN
 1" = 60'
 JAN 21, 2013
 Engberg Anderson Project No. 071711



IMPLEMENTATION PLAN DOCUMENT FOR PLANNED DEVELOPMENT

PLANNED DEVELOPMENT DESIGNATION

This Planned Development Designation, to be known as RIVERHEATH is approved this 20th Day of August, 2008 by the Common Council of the City of Appleton, Wisconsin, a Wisconsin Municipal Corporation, (hereinafter referred to as The "City") for certain real property located in Appleton and described in attached Exhibit 6 (hereinafter referred to as the "Property").

This Implementation Plan Document for Planned Development (PD) #5-08 is made and entered into by and between RiverHeath and Kaukauna Utilities and, hereinafter referred to as the "Owner/Developer") and the City. WHEREAS, Sec. 23-151(m)(2)(g)(1), Appleton Municipal Code requires the recordation of an Implementation Plan Document for Planned Developments undertaken in the City; and

WHEREAS, the actual Implementation Plan Document contemplated under the aforementioned Ordinance is too voluminous and cumbersome for easy recordation by Outagamie County Register of Deeds; and WHEREAS, the parties hereto wish to notify all interested parties of the existence of said Implementation Plan Document; NOW, THEREFORE, in consideration of the foregoing recitals, the Owner/Developer and the City hereby notify all interested parties as follows:

- 1. Existence of Implementation Plan Document for PD #5-08.** The parties hereto have entered into mutually agreeable Development and Implementation Plans for the Property. This designation establishes the general uses which shall be permitted on the property, a general development plan, a specific implementation plan and a statement of development guidelines and conditions that must be complied with by the Owner/Developer and all subsequent property owners or agents of the property owners. This designation also specifies improvements that must be made and conditions that must be fulfilled in conjunction with this designation by the Owner/Developer.
- 2. Location of Implementation Plan Document.** The Implementation Plan Document for PD #5-08 approved by Appleton Common Council action on August 20, 2008 and executed by the parties on the date of filing with the Register of Deeds office is on file with the Appleton Community Development Department, 100 North Appleton Street, Appleton, WI, and is subject to review and reproduction by all interested parties upon request.
- 3. Subsequent Purchasers.** A Planned Development (PD) is a zoning overlay district under the City of Appleton Zoning Ordinance. The Implementation Plan Document exists for Planned Developments (PDs) under this zoning category and are covenants that run with the land. Accordingly, all future purchasers of property zoned PD should become familiarized with the individual requirements attached to that specific property.

Record and return copy to
City of Appleton
Community Development
Department
100 N. Appleton Street
Appleton, WI 54911

EXHIBIT

D

4. Amendments to the Recorded Development Plans and Implementation Plan Document. Pursuant to Sec. 23-151 of the Appleton Municipal Code, major changes in a PD require approval by the City Council and subsequent recording of the amendment. The Community Development Director may approve Minor Amendments.

5. Development Guidelines and Conditions. The Development Guidelines and Conditions as of the date of this IPD include, but are not limited to, the following:

A. Land Use

1) Principal Permitted Use – Lot Area, Lot Width, Height, Yard and Other Requirements are as follows unless specifically identified as an ordinance exception in this document under Section D 3:

Principal Permitted uses in RiverHeath (per Section 23-113(b)) include:

- Professional Service Offices
- Restaurants (without alcohol)
- Restaurants, fast food
- Retail businesses
- Parking lots
- Personal services
- equipment rental
- theater

2) Special Uses

The following Special Uses are not allowed "by right" in the IPD, and will take separate application based on Special Use provisions of the Appleton Zoning Ordinance:

- Restaurants with alcohol (four liquor licenses may be required for restaurants in RiverHeath)
- Towers or antennas for wireless telecommunication services

3) Use Exceptions in IPD

Kaukauna Electric generating Facility (see D-3a Ordinance Exceptions for Powerhouse Building)

4) Accessory Uses

Accessory uses in RiverHeath (per Section 23-113(c)):

- Residential uses at least 10 feet above the street grade of the building
- Home occupation
- Fences and walls
- Refuse containers and dumpster enclosures

B. DEVELOPMENT STANDARDS

1. **Principal Use: RiverHeath** – The underlying C-2 zoning district for lot area, lot width and setbacks (on public right-of-way), and building height as they apply to the RiverHeath Project is as follows (unless specifically identified as an ordinance exception in this document under Section D 3):

Regulation	Required per C-2	Required for P.D.	Provided per This Plan	Variation Required Via P.D.
Minimum Lot Area	14,000 sq.ft.	--	16.520 acres	
Maximum Lot Cover	70%	--	69.6%	
Minimum Lot Width	60 ft	--	Exceeds 60 ft	
Minimum Front Yard	10 ft	--	10 ft	
Minimum Rear Yard	20 ft	--	**20 ft	*a.
Minimum Side Yard	None	--	None	
Minimum from Res.	10 ft	--	10 ft	
Maximum Bldg. Height	35 ft	--		*b.
Minimum District Ac.	--	2 acres	16.520 acres	
Permanent Open Sp.	--	30%	30.4%	

*See ordinance exception in this document under Section D 3a.

1a. **Principal Use: Kaukauna Utilities** – The underlying C-2 zoning district for lot area, lot width and setbacks (on public right-of-way), and building height as they apply to the Kaukauna Utilities power plant are as follows (unless specifically identified as an ordinance exception in this document under Section D 3):

Regulation	Required per C-2	Required for P.D.	Provided per This Plan	Variation Required Via P.D.
Minimum Lot Area	14,000 sq.ft.	--	9,344 sq.ft.	*c.
Maximum Lot Cover	Power Plant is part of the overall RiverHeath IPD Lot Cover Max.			
Minimum Lot Width	60 ft	--	83.93 ft	
Minimum Front Yard	10 ft	--	**14 ft	
Minimum Rear Yard	20 ft	--	3 ft	*d.
Minimum Side Yard	None	--	None	
Minimum from Res.	Not Applicable			
Maximum Bldg. Height	35 ft	--	Less than 35'	
Minimum District Ac.	Power Plant is part of the overall RiverHeath IPD Acreage			
Permanent Open Sp.	Power Plant is part of the overall RiverHeath IPD Open Space			

*See ordinance exception in this document under Section D 3b.

**The minimum of 14 feet is based on the removal of an old addition to be removed in 2008.

2. **Off-Street Parking and Loading Standards** – The Development Plan (Exhibit 1) shows surface off-street parking spaces, while Exhibit 4 and 5 show parking ramp spaces in buildings C1, D1 and F1. Exhibit 7 illustrates how parking spaces meet the existing Appleton Parking Code.

Detail on the location and size of the loading facilities for commercial and office uses in the RiverHeath will be identified on the site plans for each phase of the project.

3) Accessory Uses, Fences and Walls, Home Occupations and Refuse Container and Dumpster Enclosures – Regulations are set forth in Article III. General Provisions of the Zoning Code, unless specifically identified as an ordinance exception in this document under Section D 3.

4) Outdoor Lighting Standards –The lighting plan for each phase will be provided at site plan review for each phase, and will meet all Article III, Section 23-53 of the Zoning Code.

5) Landscaping Standards - A Landscape Plan has been submitted to the Community Development Department (see Exhibit 2) as part of the rezoning application, and a more detailed landscape plan will be part of the Site Plan Review and approval process pursuant to Article XVI, Section 23-601 of the Zoning Code and in conformance with the minimal landscape standards of the Zoning Ordinance.

6) Design Standards - The exterior of all buildings shall be compatible and consistent with the materials and colors within the development. Samples of building materials and colors are required to be submitted to the Community Development Department as part of the Site Plan Review and approval process. Any future buildings, building additions or building alterations shall be compatible with this theme, as shown in Exhibit 3 and the building materials listed below.

- **Roofing type and color:** Flat roofing and planted roofs, with smaller buildings possibly having sloped patina gray standing seam metal roofs.
- **Type and color of soffit and fascia:** Clear anodized aluminum.
- **Type and color of window trim:** Painted aluminum to match fascia color.
- **Type and color of exterior doors:** Aluminum storefront-clear anodized.
- **Exterior wall (north, south, east, west elevations)** grayish clear anodized metal panels with a silver look, with the rest being cement board painted terracotta color.

In 2008, Kaukauna Utility removed add-on portions to the original brick powerhouse, and in 2009, the exterior finish will be renovated and new windows installed to match the appearance of RiverHeath construction. By July 1, 2009, electrical renovation work will be completed and the plant will be back "on-line".

7) Designated Open Space Areas - The open space areas as shown conceptually in Exhibit 2 demonstrates approximately 30.4% open space to remain open and free from all improvements except for landscaping.

8) Site Plan Review is required for construction projects within PD overlay district #5-08 pursuant to Article XV, Section 23-570 of the Zoning Code.

9) Construction Schedule

- **Phase One** includes the completion of the clean-up, which started in 2008 and will be completed in 2009.
- **Phase Two** includes the construction of C-1, a four-story (54 foot) retail/commercial and residential structure, B1, which is the renovation of a one-story powerhouse building owned by Kaukauna Utilities, B-2, B-3, E1, and E2, which will be one-story retail/commercial buildings, and E3, which is a one story sports equipment rental facility. The timeframe for start of construction of these buildings is 2009, with completion by the end of 2010.

- Phase Three includes the construction of F1 which is an eight story retail/commercial, office, residential, and parking ramp structure. The timeframe for start of construction is 2011 and will be completed in 2012.
- Phase Four includes the construction of D-1, which is a duplicate of C-1 with an opportunity for additional parking decks to supplement parking spaces, and A-1, which will be a commercial/office building and associated parking. The timeframe for start of construction is 2012 will be completed in 2013.

10) **Words and Terms Defined** – Pursuant to Article II, Section(s) 23-21 and 23-22 Definitions of the Zoning Code unless specifically identified as an ordinance exception in this document under Section D 3.

C. REQUIRED IMPROVEMENTS

1. Access

All access issues are addressed and will be in compliance with the Development Agreement for this project between the Developers and the City of Appleton.

2. Water Systems

Connection to the public water system and installation of public and private waterlines are addressed in the Development Agreement.

3. Sewer Systems

Connection to the public sewer system and installation of public and private sewer mains are addressed in the Development Agreement.

4. Fire Protection

Fire Service is addressed in the Development Agreement.

5. Utilities and Easements

Utilities and easements in the PD rezoning are addressed in the Development Agreement.

D. IMPLEMENTATION

1. **Platting Requirements** - The petitioner will file the necessary land divisions (including street dedications) required to develop all phases of the RiverHeath project.

2. Density of Development

Densities of development indicated in Exhibit 1 represent the maximum permitted densities and levels of use. Each development phase must meet all applicable standards and requirements as contained in the Appleton Municipal Code unless such standards and requirements are specifically waived or modified by the terms of this designation.

3a. Ordinance Exceptions for RiverHeath:

- I. **Rear Yard Variation:** Where 20 feet is required, there will be a zero setback where decking materials cover the concrete foundation of the previous industrial structure to the edge of the waterfront.
- II. **Height Variation for Height:** The three mixed use structures will exceed the 35' maximum height standard in the C-2 General Commercial District. Buildings C1 and D1 will be four story structures with a maximum height of 54 feet, which will exceed the maximum height by 19 feet. Building F1 may be up to eight stories with a maximum height of 110 feet.

3b. Ordinance Exceptions for Powerhouse Building:

- I. **Minimum Lot Area:** The petitioners are requesting an ordinance exception of 4,656 sq. ft.
- II. **Minimum Rear Yard Setback:** 20 feet required. The power plant has 3 feet of rear yard setback before the tail race begins. The petitioners are requesting an ordinance exception of 17 feet.
- III. **Use Exception:** Electric Generating Facility. This use will be allowed only after a Special use permit has been approved by the City of Appleton

E. GENERAL PROVISIONS

1. Enforcement

The provisions of the RiverHeath and Kaukauna Utilities Planned Development designation and the development plan relating to the use of the land shall be effective and in force unless so amended as required by the Appleton Municipal Code Section 23-151.

2. Breach of Provisions of PD Designation

If at any time any provision or requirements stated in the RiverHeath and Kaukauna Utilities Planned Development designation have been breached by the Owner/Developer, the City may withhold approval of any or all platting or the issuance of any or all grading or building permits or occupancy permits applied for on the property, until such breach has been remedied.

3. Binding Effect

This RiverHeath and Kaukauna Utilities Planned Development designation shall run with the land and be binding upon the Owner/Developer, their respective successors, representatives and assigns, and all persons who may hereafter acquire an interest in the Property or any part thereof, with the exception that provisions of this designation may be modified through an amendment in accordance with the procedure stated in the Appleton Municipal Code Section 23-151. This designation shall be recorded in order to put prospective purchasers or other interested persons on notice as to the terms contained herein.

4. Entire Designation

This designation contains all provisions and requirements incumbent upon the Owner/Developer relative to RiverHeath and Kaukauna Utilities Planned Development #5-08, except as modified by subsequent action of the Appleton Common Council in accordance with procedures set forth in the Appleton Municipal Code Section 23-151 to amend planned developments, and except that nothing contained herein shall be construed as waiving any requirements of the Appleton Municipal Code or other regulations otherwise applicable to the development of the Property.

5. Period of Validity

The Implementation Plan and Development Plan (Exhibits 1-7) from the date of this implementation Development Plan as approved by the Common Council shall remain valid for a period of one (1) year during which time a building permit must be applied for and received. If the applicant does not apply for and receive a building permit within one (1) year from the date of this implementation Development Plan, of Common Council approval of PD overlay district PD) #5-08, Development Plan and Implementation Plan Document (IPD), the Development Plan and Implementation Plan Document (IPD) said inaction will constitute abandonment of the PD overlay district and related approvals, and any assumed development rights over that allowed through the underlying zoning district and shall be subject to the regulations in §23-151(I), Proof of validity and expiration of plans, of this chapter.

6. Recording of Development Plan and Implementation Plan Document (IPD)

This designation must be signed by both the City and the Owner/Developer and must be recorded by RiverHeath and Kaukauna Utilities in the Outagamie County Register of Deeds

Office and a recorded copy of the Development Plan and Implementation Plan Document (IPD) shall be provided to the Community Development Department. This constitutes approval of the Development Plan and Implementation Plan Document (IPD), conditions applied, modifications and any density premiums, which may be granted, and exceptions, if any, to the plan shown in the application ordered by the Common Council.

Dated this ___ day of September, 2008.

By: _____
Jeffery W. Feldt, Kaukauna Utilities
General Manager

STATE OF WISCONSIN)
)ss
COUNTY OF OUTAGAMIE)

Personally came before me this _____ day of September, 2008
the above named _____, and _____,
to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My Commission expires _____

Dated this ___ day of September, 2008

By: _____
Mark Geall, Tenasey Development
Title:

By: _____
Owner
Title:

STATE OF WISCONSIN)
)ss
COUNTY OF OUTAGAMIE)

Personally came before me this _____ day of September, 2008
the above named _____, and _____,
to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My Commission expires _____

The above Implementation Plan for Planned Development #5-08, was drafted by the undersigned at the request of the Property Owner.

Drafter's Signature

Date

Approved as to form:

James P. Walsh
Appleton City Attorney

CITY OF APPLETON, a Wisconsin
Municipal Corporation

By: _____
Timothy M. Hanna, Mayor

Attest: _____
Cynthia Hesse, City Clerk

STATE OF WISCONSIN)
)ss
COUNTY OF OUTAGAMIE)

Personally came before me this day of September __, 2008, the above named Timothy M. Hanna, Mayor of City of Appleton, and Cynthia Hesse, City Clerk of City of Appleton, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Notary Public, State of Wisconsin
My Commission expires _____

Exhibit 2
 Conceptual Landscape Plan

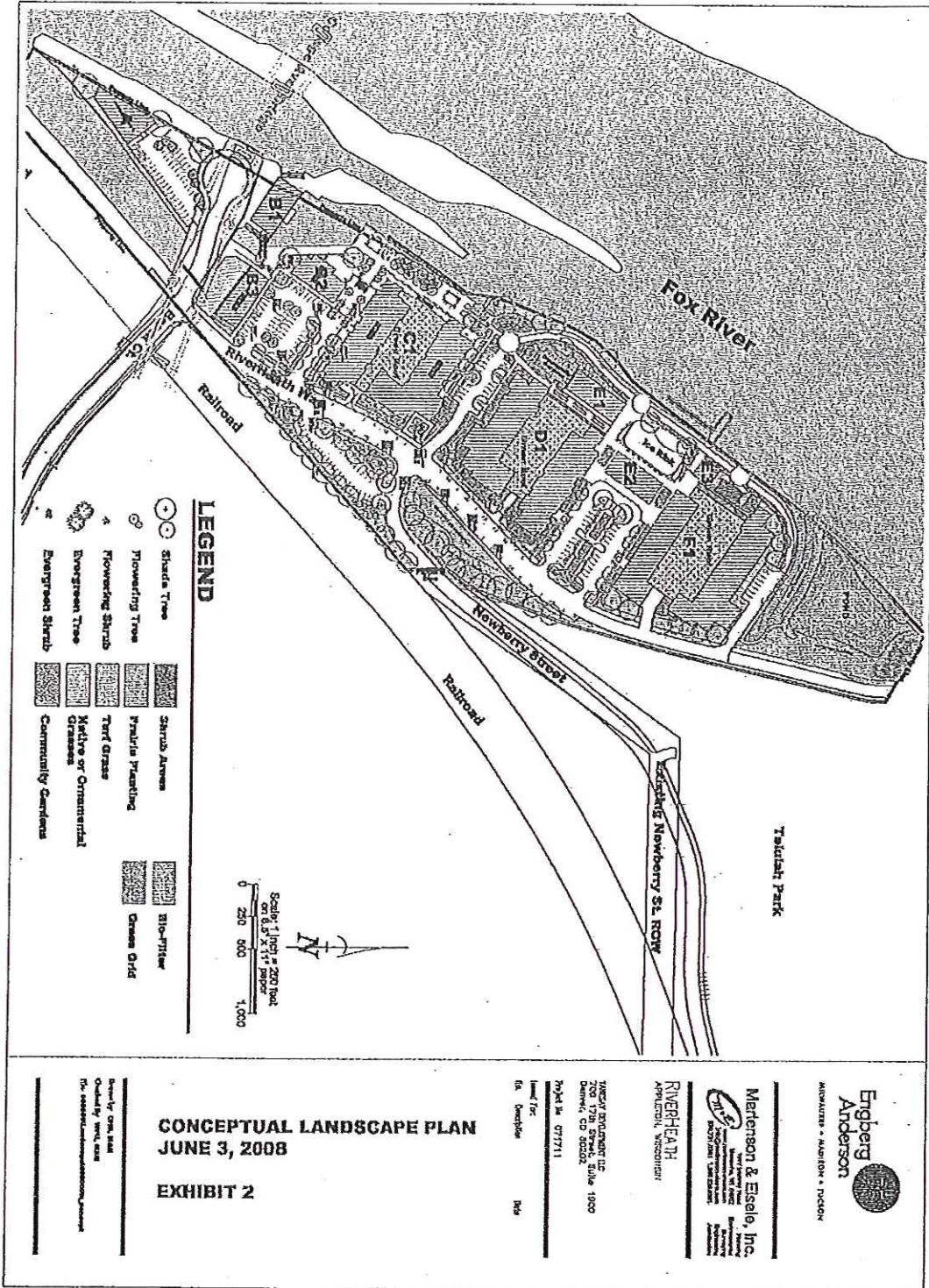


Exhibit 3
RiverHeath Building Elevations

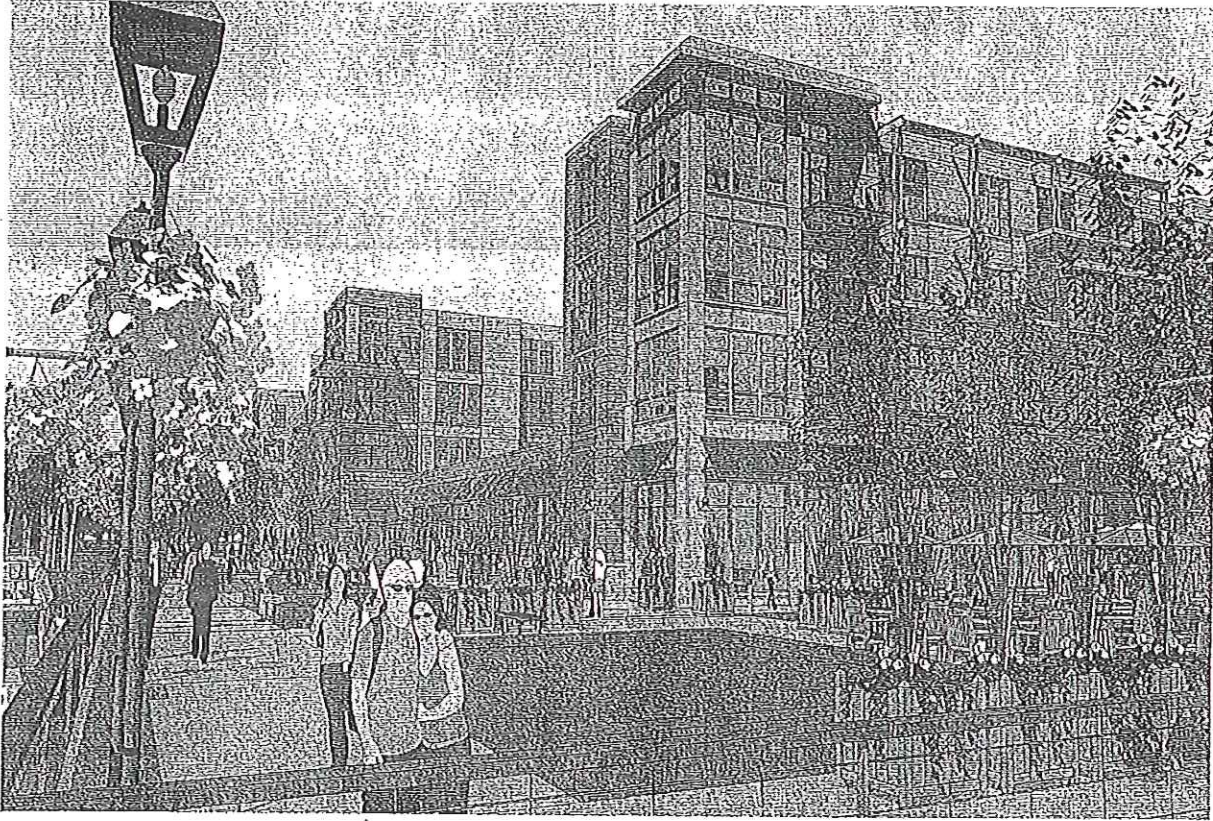
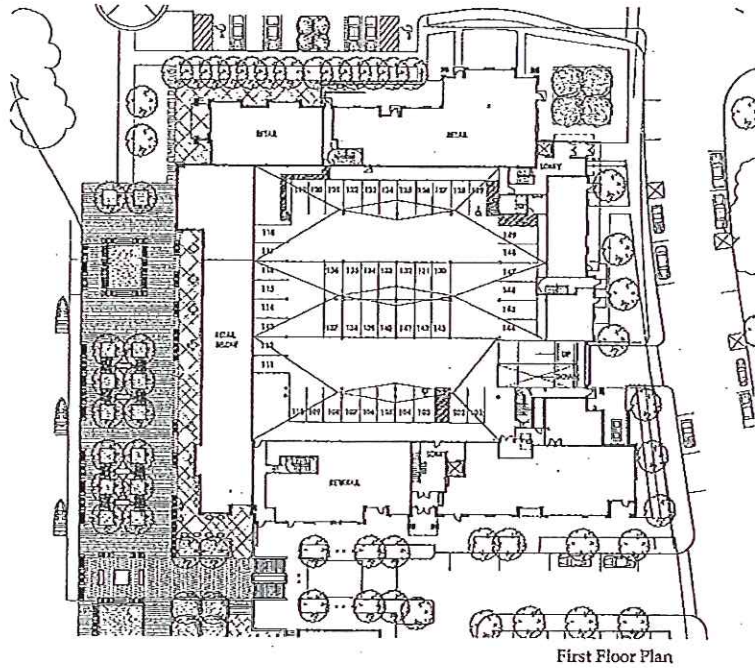
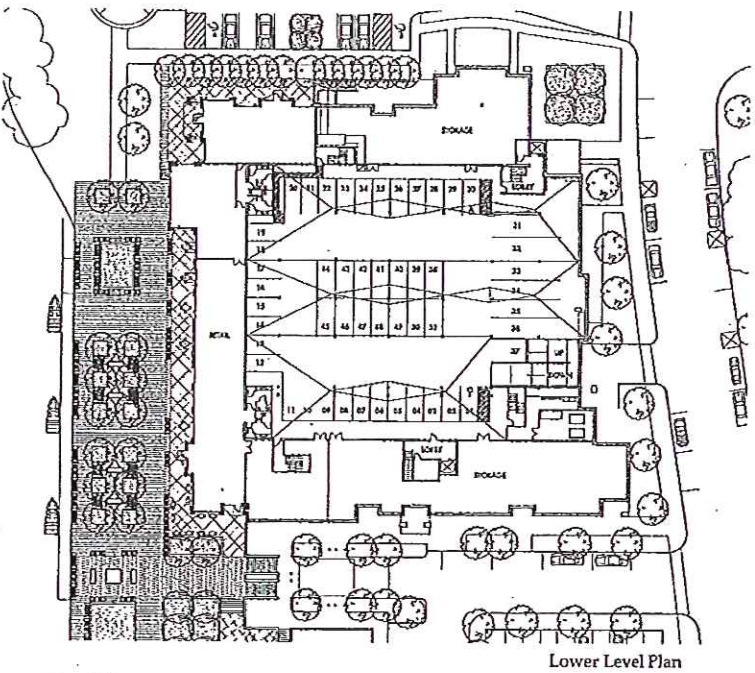


Exhibit 4:
Parking ramp floor plan of C1



First Floor Plan



Lower Level Plan

RIVERHEATH

Floor Plans
 EADP Project No. 071711



Scale: 1" = 20'-0"
 June 13, 2008

Exhibit 5:
Parking ramp floor plan of F1

**Engberg
Anderson**
ARCHITECTS + LANDSCAPE ARCHITECTS

RIVERHEATH
F1 Schematic layout and height relationship to site and bluff
June 18, 2008
Engberg Anderson Project No. 071711

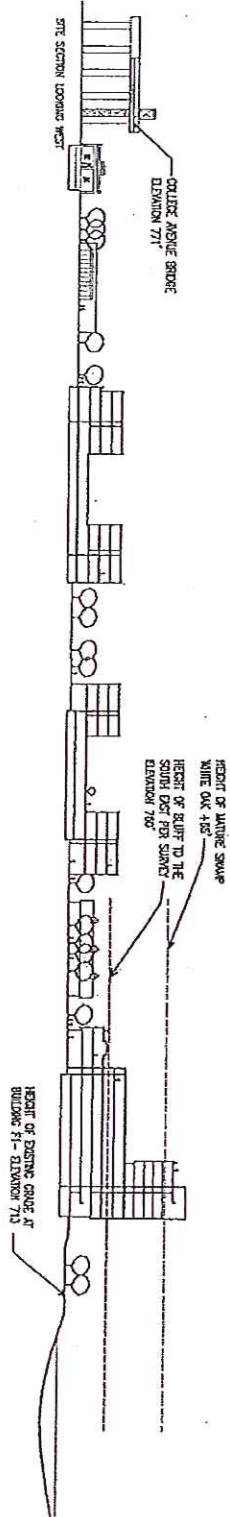
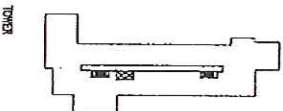
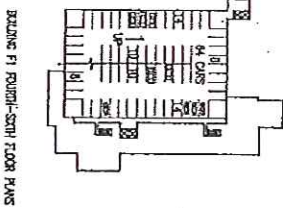
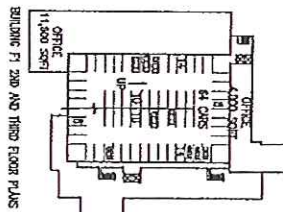
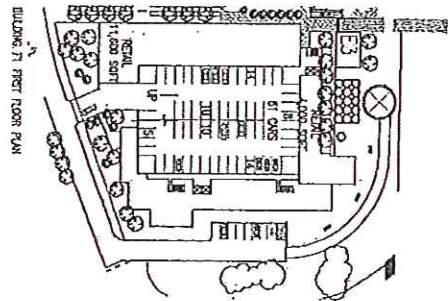
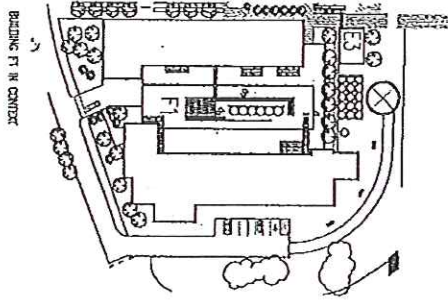


Exhibit 6
LEGAL DESCRIPTION
FOR REZONING FROM M-2 TO PD/C2

PART OF JOHN STREET AND PART OF BLOCKS 55 AND 56, FOURTH WARD PLAT, SECTION 25, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN MORE FULLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 25; THENCE NORTH 00 DEGREES 20 MINUTES 22 SECONDS WEST, ALONG THE EAST LINE OF SAID SECTION 25, A DISTANCE OF 822.44 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 47 DEGREES 45 MINUTES 31 SECONDS WEST, ALONG THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF NEWBERRY STREET, 1212.74 FEET; THENCE NORTH 56 DEGREES 04 MINUTES 24 SECONDS WEST, 121.60 FEET; THENCE, NORTH 28 DEGREES 16 MINUTES 11 SECONDS EAST, 840.62 FEET; THENCE NORTH 15 DEGREES 14 MINUTES 11 SECONDS EAST, 21.46 FEET TO A MEANDER CORNER WHICH IS SOUTH 55 DEGREES 32 MINUTES 12 SECONDS EAST, 20 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE NORTH 34 DEGREES 26 MINUTES 26 SECONDS EAST, 165.19 FEET TO A MEANDER CORNER WHICH IS SOUTH 55 DEGREES 32 MINUTES 12 SECONDS EAST, 28 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE NORTH 17 DEGREES 49 MINUTES 48 SECONDS EAST, 213.47 FEET TO A MEANDER CORNER WHICH IS SOUTH 55 DEGREES 32 MINUTES 12 SECONDS EAST, 12 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE NORTH 45 DEGREES 00 MINUTES 18 SECONDS EAST, 140.58 FEET TO A MEANDER CORNER WHICH IS SOUTH 55 DEGREES 32 MINUTES 12 SECONDS EAST, 16 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE NORTH 36 DEGREES 33 MINUTES 10 SECONDS EAST, 443.35 FEET TO A MEANDER CORNER WHICH IS SOUTH 55 DEGREES 32 MINUTES 12 SECONDS EAST, 14 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE NORTH 45 DEGREES 43 MINUTES 04 SECONDS EAST, 293.18 FEET TO A MEANDER CORNER WHICH IS SOUTH 60 DEGREES 06 MINUTES 02 SECONDS EAST, 20 FEET MORE OR LESS FROM THE WATERS' EDGE OF THE FOX RIVER; THENCE ALONG THE NORTHERLY LINE OF BLOCK 56 OF SAID FOURTH WARD PLAT, SOUTH 60 DEGREES 06 MINUTES 02 SECONDS EAST, 130.51 FEET; THENCE SOUTH 01 DEGREE 44 MINUTES 58 SECONDS WEST, 34.56 FEET; THENCE SOUTH 13 DEGREES 10 MINUTES 13 SECONDS WEST, 107.81 FEET; THENCE SOUTH 13 DEGREES 10 MINUTES 13 SECONDS WEST, 286.60 FEET; THENCE SOUTH 14 DEGREES 44 MINUTES 12 SECONDS WEST, 221.40 FEET; THENCE SOUTH 19 DEGREES 45 MINUTES 55 SECONDS WEST, 187.71 FEET; THENCE SOUTH 34 DEGREES 42 MINUTES 45 SECONDS WEST, ALONG THE NORTHWESTERLY RIGHT-OF-WAY LINE OF NEWBERRY STREET, 69.80 FEET; THENCE SOUTH 47 DEGREES 45 MINUTES 31 SECONDS WEST, ALONG SAID NORTHWESTERLY RIGHT-OF-WAY LINE, 1.20 FEET; THENCE SOUTH 00 DEGREES 20 MINUTES 22 SECONDS EAST, ALONG THE EAST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 25, A DISTANCE OF 80.61 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 739,808 SQUARE FEET MORE OR LESS (16.98 ACRES MORE OR LESS), INCLUDING ALL LANDS LYING BETWEEN THE MEANDER LINES AND THE WATERS' EDGE OF THE FOX RIVER.

Exhibit 7

Building Occupancy (Refer to Site Plan for Building location)

Spaces provided are based on minimal parking spaces based on the Appleton Zoning Code

#	Likely Occupancy	No. Stories	Sq. Ft	# of Apts.	City Parking Comm.	Site Plan Comm.-Parking	City Parking Residential	Res.-Site Plan Parking
Phase 2								
C1	Retail/Commercial	4	18,500		93 (1@ 200)	26		
C	Pkg. E. of RiverHeath Way					30		
C	Private On-Street Parking					23		
	Public On-Street Parking (Request on-street parking be counted)					16		
C1	Residential Units	4		62 U			124	100
C	Pkg. E. of RiverHeath Way							8
B1	Power Plant (Kauk. Util.)	1	--	--	--		--	
B2	Restaurant	1	4,000	--	20 (1@ 200)	20		
B3	Restaurant and Retail	1	4,740	--	24 (1@ 200)	24		
E1	Theater (75-150 seat)	1	5,200		30 (1@ 5 persons)	20		
E2	Commercial	1	5,300	--	27 (1@ 200)	20		
E3	Sports Equipment Rental	1	1,200		6 (1@ 200)			
E	Temporary Parking Lot to Meet Parking Code					21		16
	Subtotal		38,940	56U	200	200	124	124
Phase 3								
F1	Retail	8	15,600		78 (1@ 200)	80		
F1	Office/Commercial		31,200		104 (1@ 300)			
F1	Residential Units			80 U			160	160
F1	Required parking for Phase 1							16
	Subtotal		46,800	80 U	182		160	176
Phase 4								
D1	Commercial	4	11,000		55 (1@ 200)	55		
D1	Residential Units			62 U				124
A1	Professional Office		11,200	--	38	38	--	--
	Subtotal		22,200	62U	93	93	124	124
	Total		107,940	204	475	498-21=477	408	424-16=408

Notes:

1. Following each phase, the Petitioner may approach the City of Appleton to provide a "parking history" and negotiate a more appropriate number of parking stalls in the next phase to minimize hard surface area. The developer understands that any major change in the number of parking stalls will require a new hearing before the Plan Commission and Common Council and an amendment to the Implementation Plan.

4. Phase 1 was the clean-up of the site.

RiverHeath Management Plan

RiverHeath is a 15 acre mixed-use brownfield redevelopment located along the shores of the Fox River in Appleton, Wisconsin. This project is the culmination of a 10 year effort to clean up a former paper manufacturing operation. RiverHeath will be a new neighborhood, with residences, shops, restaurants, and offices. The design incorporates walking trails along the river, community gardens, green roofs, and innovative stormwater controls.

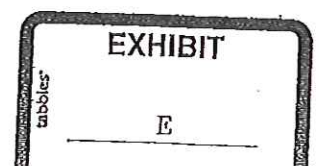
A major component of the project is our reliance on renewable energy. One legacy of the land's industrial past is an onsite hydro-electric facility which formerly powered the paper factories. The onsite hydro is being refurbished and will furnish 100% of the project's electricity demand.

The residences at RiverHeath will have riverfront views, heating indoor parking, storage spaces, and higher end finishes, such as granite kitchens and bathrooms. The residences will be leased; it is possible that the residences will be converted into condominiums in the future. There will be an onsite sales director and an onsite property manager. The property manager will be responsible for the maintenance of the property, including the commercial spaces, hallways, walkways and trails. The property manager will be responsible for snow clearing on sidewalks. Snow clearing on the private roads at RiverHeath will be handled by a subcontractor.

RiverHeath has a sales office located in the ground floor of the Zuelke Building, located at 103 West College Avenue. The sales office and sales director will move to RiverHeath as soon as the space in RiverHeath is finished and occupancy permits are obtained.

Lease rates for both the commercial and residential spaces will be in line with market leased rates in the Fox Valley, although they will be in line with similarly situated waterfront downtown property. Leased rates will start at \$15 / sf and increase depending on location, view, and amenities.

RiverHeath's first and second phases should be complete by fall 2010. Boldt Construction is the general contractor. Martenson & Eisele is the civil engineer. Engberg Anderson is the architecture firm. Design for the master site plan is complete. Demolition on the site is complete. The active remediation on the site should be completed by the end of June 2009. The clearing and grubbing is complete. The design for the primary residential structure is complete. Construction on the primary residence structure should begin in September 2009. CBRE Capital Markets is in the process of underwriting the construction loan. CBRE or any capital provider will require that the TIF district and signed Development Agreement be in place prior to completing their review process. The equity has been fully committed and funded.



DATE: January 22, 2009

FILE REF: 2300

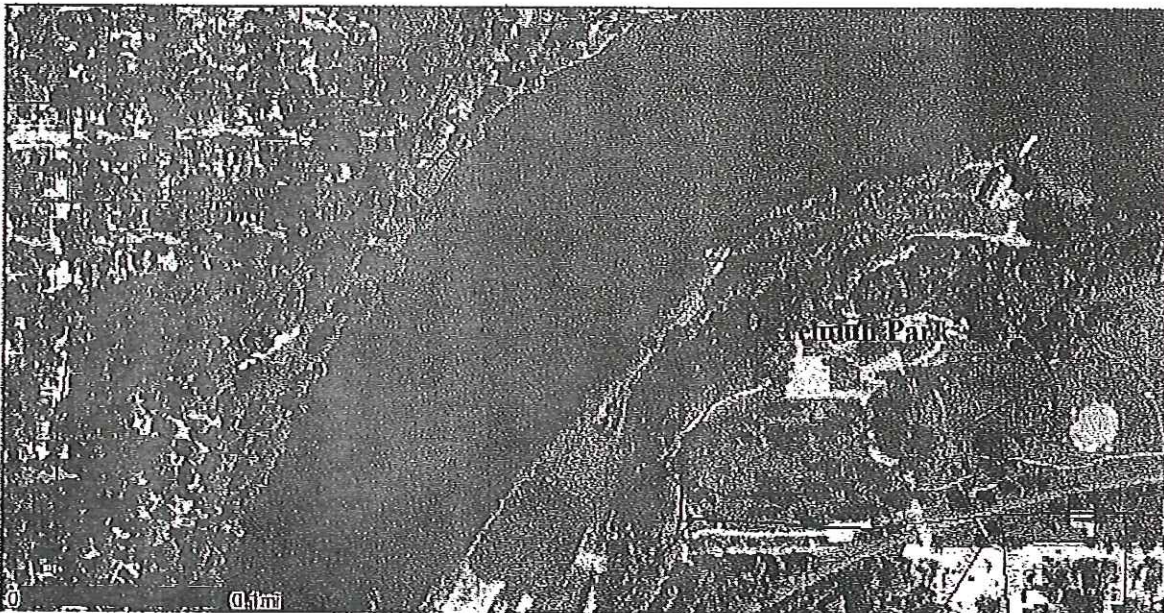
TO: Jon Brand

FROM: Dick Nikolai

SUBJECT: RiverHeath/Tanesay

This is clarifying other aspects which can be enhanced along Peabody Park.

- 1.) Reduce the amount of grassed areas near the shoreline. These can be planted to shrubs near the water and overhang. Limited trees can be planted with potential for large mass canopy are preferred. Species to use for trees are Burr Oak, White Oak, Cottonwood, Basswood, Hickory, etc. For the shrubs one can use Arrowwood, Nannyberry, Native highbush cranberry, red-osier dogwood, grape, thorn-apple, Speckled alder, winterberry, etc.
- 2.) Create along the shoreline poles that extend higher than the current tree canopy for perching (2-3) which can also be with nesting platforms for eagles and ospreys (1-2).
- 3.) Areas of jetting into the river to create small spits or microhabitat for fish, frogs, ducks, shorebirds and other species which also may have shrubs on them. (Note picture on map below) The wall does not necessarily need to be taken away but rather habitat placed next to it to cover and restore the shoreline. This can be rocks grading out toward the river as well as logs placed into the bank and going out into the river.
- 4.) Observation mound to get overview of the Fox River and to create a spot for the pole mentioned before for nesting pole or perching site.

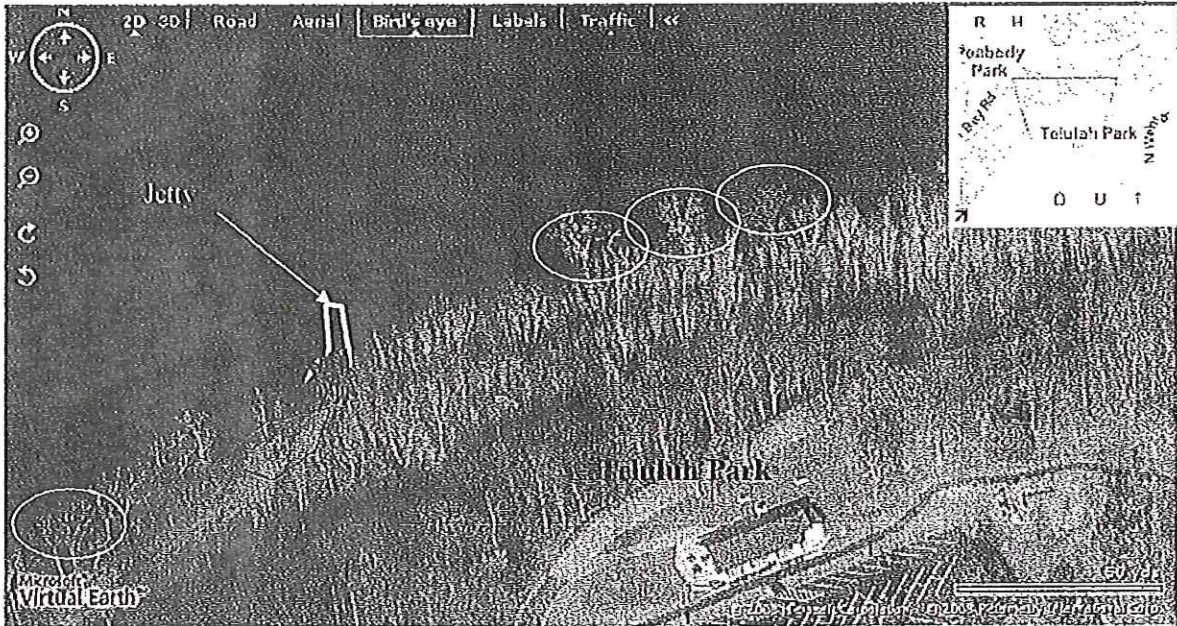


Scale: 1:6,459

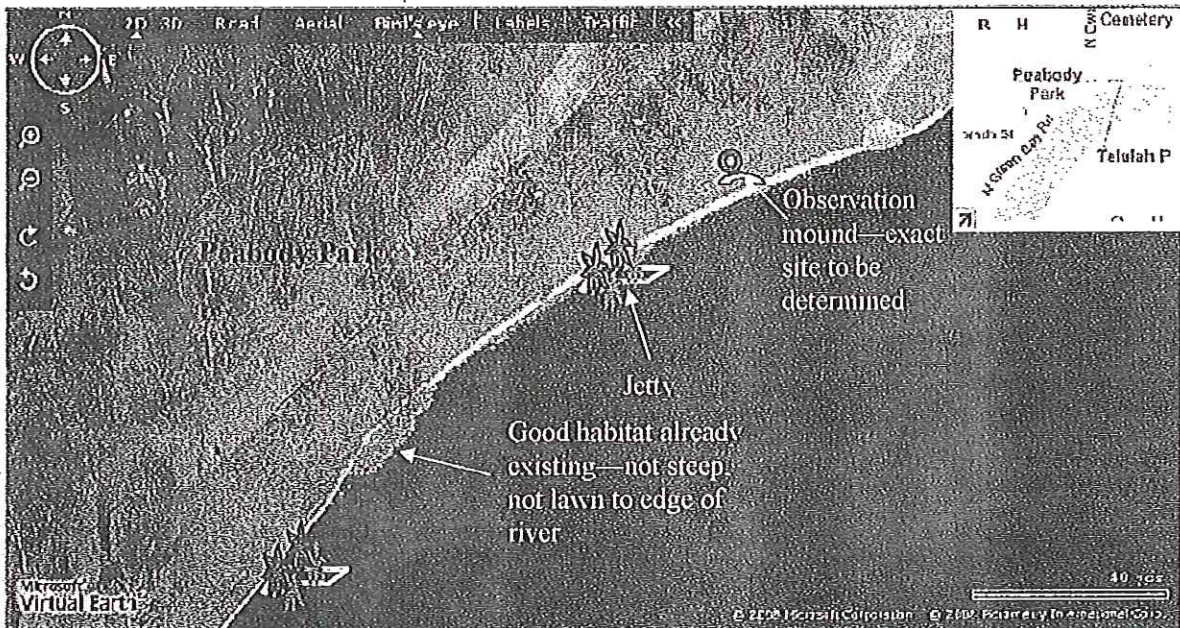
While investigating the site on July 29, 2008 as well as seeing Telulah Park and Peabody Park on my own time during the summer, especially September 1, 2008 numerous fisher people were present along both parks. For Telulah Park, the highlighted area in red was the place of choice. It was an opening in the trees which allowed fly fishing for at least one person. Off from this point is a minor bass spawning bed as noted by the person present. For Peabody Park there are two sites of seeing fisher people. These are also highlighted in red. A bass spawning area exists offshore indicated by a blue highlighted line.

EXHIBIT

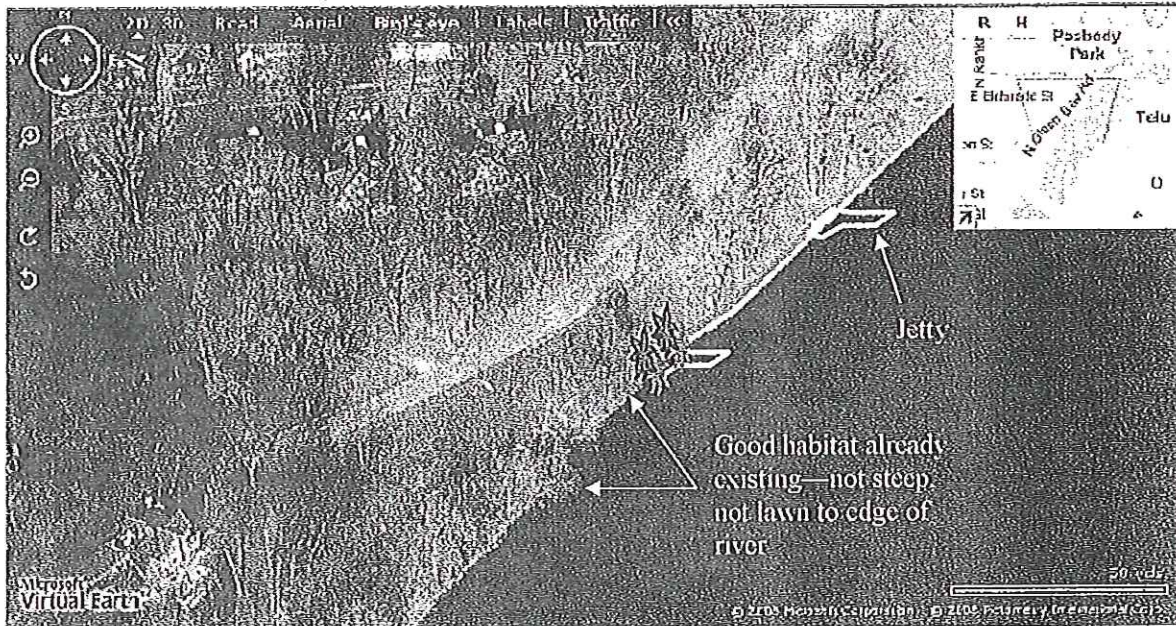
F



Areas of current fishing and bass spawning as indicated in another picture. Habitat along this stretch is not perfect but substantial for wildlife. Would prefer to leave alone for there are many trees along the shoreline and some shrubs. The opening above used for fishing may be a spot to enhance so as they can get greater access to the river. There are trees that are used by raptors (eagles) already along the river and we do not want them to be destroyed.



Jetty areas would be boom-a-rang shape or similar. They would have many size of rocks contained within—Outer would be large and smaller on the inside so as to allow invertebrates to crawl in between and species like turtles or any amphibians to crawl upon. They would have shrubs growing on them so as to offer habitat on top and along the shore or jetty. The observation mound is to get people to see the river and wildlife from a higher elevation and allow accessible access for all for viewing when weather is appropriate. Site can also be used for a pole for nesting platform or perch for raptors.



About 3-5 jetties along the river would increase habitat availability along the river corridor where none exists now.

All other recommendations that we listed previously by me can certainly be utilized for improvement for wildlife cover outlined in memo's dated 10-23-08, 1-11-08 and letter dated 7-31-08.

REFERENCE DRAWING

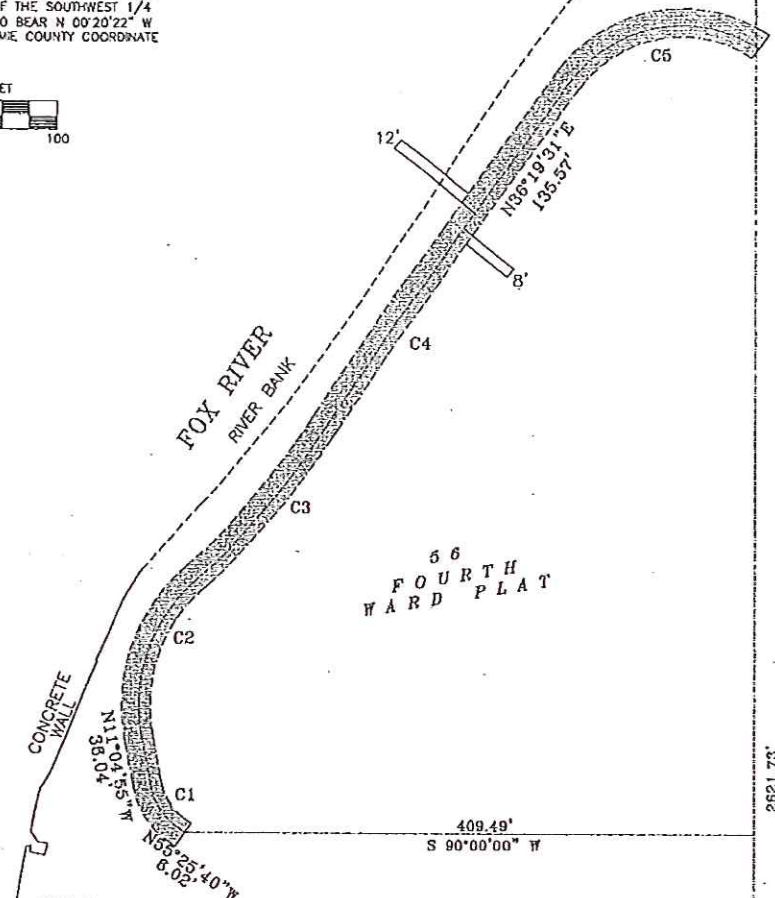
TRAIL AND FIRE ACCESS EASEMENT TO THE CITY OF APPLETON

BEARINGS ARE REFERENCED TO THE
EAST LINE OF THE SOUTHWEST 1/4
RECORDED TO BEAR N 00°20'22" W
PER OUTAGAMIE COUNTY COORDINATE
SYSTEM

SCALE IN FEET
0 100

WITNESS
CORNER
N 56°45'20" W
143.90'

TRUE CORNER
CENTER 1/4 CORNER
SECTION 25
T 21 N, R 17 E
(FALLS IN WATER)



CURVE	RADIUS	LENGTH	CHORD
1	48.00'	37.15'	N 33°15'17" W, 36.23'
2	114.00'	118.79'	N 18°46'10" E, 113.49'
3	547.00'	146.39'	N 40°57'14" E, 145.96'
4	3053.00'	161.90'	N 34°48'22" E, 161.88'
5	100.00'	151.34'	N 79°40'56" E, 137.31'

MEANDER CORNER
SECTION 36
T 21 N, R 17 E

SOUTH 1/4 CORNER
SECTION 25
T 21 N, R 17 E

PROJECT NO. 688-000
FILE 688000TrailEasement.DWG
THIS INSTRUMENT WAS DRAFTED BY: DMS

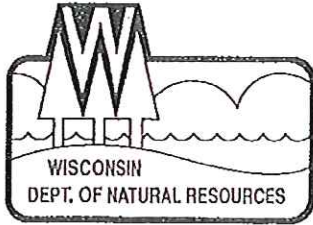
EXHIBIT
G

LEGAL DESCRIPTION
FOR 20 FOOT WIDE TRAIL AND FIRE ACCESS EASEMENT

PART OF BLOCK 56, FOURTH WARD PLAT, BEING PART OF THE SOUTHWEST 1/4 OF SECTION 25, TOWN 21 NORTH, RANGE 17 EAST, CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 25; THENCE NORTH 00 DEGREES 20 MINUTES 22 SECONDS WEST, ALONG THE EAST LINE OF SAID SOUTHWEST 1/4, A DISTANCE OF 1003.92 FEET; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 409.49 FEET TO THE POINT OF BEGINNING BEING A REFERENCE LINE OF A 20 FOOT WIDE TRAIL AND FIRE ACCESS EASEMENT; THENCE NORTH 55 DEGREES 25 MINUTES 40 SECONDS WEST, ALONG SAID REFERENCE LINE, 6.02 FEET; THENCE ALONG SAID REFERENCE LINE, 37.15 FEET ALONG AN ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 48.00 FEET WITH A CHORD WHICH BEARS NORTH 33 DEGREES 15 MINUTES 17 SECONDS WEST, 36.23 FEET; THENCE NORTH 11 DEGREES 04 MINUTES 55 SECONDS WEST, ALONG SAID REFERENCE LINE, 36.04 FEET; THENCE ALONG SAID REFERENCE LINE, 118.79 FEET ALONG AN ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 114.00 FEET WITH A CHORD WHICH BEARS NORTH 18 DEGREES 46 MINUTES 10 SECONDS EAST, 113.49 FEET; THENCE ALONG SAID REFERENCE LINE, 146.39 FEET ALONG AN ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 547.00 FEET WITH A CHORD WHICH BEARS NORTH 40 DEGREES 57 MINUTES 14 SECONDS EAST, 145.96 FEET; THENCE ALONG SAID REFERENCE LINE, 161.90 FEET ALONG AN ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 3053.00 FEET WITH A CHORD WHICH BEARS NORTH 34 DEGREES 48 MINUTES 22 SECONDS EAST, 161.88 FEET; THENCE NORTH 36 DEGREES 19 MINUTES 31 SECONDS EAST, ALONG SAID REFERENCE LINE, 135.57 FEET; THENCE ALONG SAID REFERENCE LINE, 151.34 FEET ALONG AN ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 100.00 FEET WITH A CHORD WHICH BEARS NORTH 79 DEGREES 40 MINUTES 56 SECONDS EAST, 137.31 FEET TO THE POINT OF TERMINUS, CONTAINING 15,990 SQUARE FEET MORE OR LESS (0.367 ACRES MORE OR LESS).

EASEMENT IS 12 FEET WIDE TO THE LEFT AND 8 FEET WIDE TO THE RIGHT OF SAID REFERENCE LINE AS SHOWN ON ATTACHED REFERENCE DRAWING.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters
2984 Shawano Ave., P.O. Box 10448
Green Bay, Wisconsin 54307-0448
Telephone 920-662-5100
FAX 920-662-5413
TTY Access via relay - 711

October 3, 2008

IP-NE-2008-45-67266, 67268,
67836, 67840, 67841, 70193

Tanesay Development LLC
Mark Geall
1335 North Dearborn Parkway
Chicago, IL 60610

Dear Mr. Geall:

We have reviewed your application for a permit/approval to place structures on the bed of, grade in excess of 10,000 square feet on the bank of, create a connected enlargement, remove material (dredge) from the bed of, and for a large dam abandonment and transfer of structures (Lower Appleton Dam) on the Fox River, located in the City of Appleton, Outagamie County. You will be pleased to know your application is approved with a few limitations.

I am attaching a copy of your permit which lists the conditions which must be followed. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

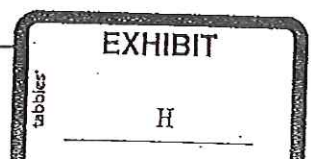
Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at (920) 662-5466.

Sincerely,

Jon Brand
Water Management Specialist
Green Bay Basin



cc: Nick Domer - U.S. Army Corps of Engineers
Tim Roach -Outagamie County Zoning Administrator
Cynthia Hesse – Appleton City Clerk
Outagamie County Conservation Warden - Appleton
Jeffery Feldt – City of Kaukauna Utilities
Gary Raasch, Hey & Associates, Inc., 240 Regency Court, Suite 301
Brookfield, 53045
Kristy Rogers - NER
Miles Winkler – NER
Dan Helf – NER
Bruce Urben - NER
Dave Rowe – NER
Dick Nikolai – Appleton
Jennifer Borski – Oshkosh
WMS File

6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
10. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.

Erosion Control

11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and as specified in the plans and procedures that are part of or approved pursuant to this permit. All erosion control measures must meet or exceed the approved Stormwater Construction Technical Standards found on the Department's Runoff Management Website <http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code Ch. NR 151.31.
12. After the site is 80% stabilized, or prior to at the direction of the Department, all temporary erosion control measures must be removed and disposed of properly. Any remaining temporary erosion control devices after this point constitute littering and may be enforced as determined necessary by the department.
13. Appropriate erosion control measures must be in-place and effective during every phase of this project.
14. Erosion control measures must be in place at the end of each working day.
15. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.

Channel Dredging/Filling and Fish Removal Plan

16. The channel portion of Telulah Canal north of the power house intake (approximately 1.7 acres) shall be filled with material that has been approved by all appropriate federal, state and local agencies. Contaminated materials or soils shall not be used to fill this portion of the canal.
17. Prior to removal of any bottom material from the Telulah Canal where the cut off/retaining wall is to be placed (north of the intake canal for the power house) you must analyze the bottom material based on Department requirements. Proper handling, storing and disposal of the removed bottom material shall occur.
18. You shall submit final plans for the cut off/retaining wall (including overview and cross sectional drawings and material specifications) to the Department within 60 days of receipt of this permit. You shall notify the Department if there are any revisions to the final plans and the plans dated July 11, 2008 and developed by Pierce Engineering, Inc.
19. The "fish removal plan" shall be implemented as described in the document submitted to the Department by Hey and Associates, Inc. on July 15, 2008.
20. Final approval of the "fish removal plan" shall be given by the assigned Department fishery biologist. This person shall be notified a minimum of 5 days prior to the implementation of the "fish removal plan".

Invasives

21. All equipment used for the project including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps shall be decontaminated for invasive and exotic viruses and species prior to use and after use. **Specific disinfection measures are required on infested waters and must be taken prior to moving to another waterbody. The most current decontamination protocols and a list of infested waters can be found at the following website <http://dnr.wi.gov/> under the Topic "VHSv".**

If your project is on a non-infested water, the following steps should be taken *every time* you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters should not be used on other non-infested waters.

1. **Inspect and remove aquatic plants, animals, and mud from your equipment.**
2. **Drain all water from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, hoses, sheet pile and pumps**
3. **Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals or water from one waterbody to another.**

4. Wash your equipment with hot (>104° F) and/or high pressure water OR allow your equipment to Dry thoroughly for 5 days.

Habitat Creation and Enhancement – Telulah Pond and Other Projects

22. The habitat creation pond shall be constructed as shown on the plan sheet dated April 25, 2008 and submitted to the Department by Hey and Associates, Inc.
23. The habitat creation pond shall be developed as described in the "monitoring and management plan" submitted to the Department on July 15, 2008 by Hey & Associates, Inc.
24. You shall contact the Department's assigned Water Management Specialist a minimum of five days prior to the beginning of construct of the habitat creation pond.
25. All conditions of the Army Corps of Engineers (ACOE) general permit pertaining to the project shall be followed. All required reporting stated in the ACOE permit shall be submitted to the assigned Department Water Management Specialist.
26. The habitat creation pond shall be completed prior to or concurrently with the construction of the authorized project, and all earth work, construction and planting on the creation/enhancement site shall be completed no later than 60 days after the work authorized by this permit is completed.
27. You shall submit an as-built report no later than 30 days after habitat creation pond completion describing the construction of the pond in accordance with the July 15, 2008 correspondence and the April 25, 2008 plan sheet to the assigned Department Water Management Specialist. Any variation of this construction must be approved by the Department.
28. You shall submit annual monitoring reports on or before December 31st for a period of 3 years from date of completion of the habitat creation pond. The report shall contain all information collected as stated in the "monitoring and management plan" dated July 15, 2008 and the following:
 1. Status of the elongated island that separates the habitat creation pond from the Fox River. This island shall be adequately protected to maintain its structural integrity.
 2. Results of all dissolved oxygen including those conducted twice monthly during ice covered periods.
 3. Results of fish surveys conducted twice annually (spring and fall). You shall report species and abundances collected during your sampling efforts.

4. An evaluation of fish and vegetation surveys. The Department may require changes in management techniques to reduce abundances of non-desirable species.
 5. Calculations that identify annual minimum/maximum flows at the upstream inlet point and calculations of the annual high and low pond volume correlated to surface area of the pond. The .72 acre value shall be the annual minimum surface water area.
29. You shall further investigate the potential of doing habitat enhancements, development of an invasive Species Plan w/goals, and Public Access and Recreational Opportunities as describe in the Department's July 31, 2008 letter to Tanesay Development LLC for the City of Appleton's Peabody Park area. You shall submit this information to the assigned Department Water Management Specialist no later than 60 days of receiving this permit.

Dam Abandonment/Transfer and Floodplain Approval

The Department hereby approves the application to abandon the right end of the Lower Appleton Dam. The exact description of the abandonment is included on the drawing titled "Proposed Lot Layout, Block 55 & 56, 4th Ward Plat, Government Lot 2 & 3, Section 25, T21N, R17E, City of Appleton" sheet 1 of 1 as prepared by Omni Associates, and dated 6/7/2007, and consists of all of Parcel B.

This approval to abandon the right end of the Lower Appleton Dam is made with the following conditions:

30. Within two (2) years of the date of this approval, Tanesay Development LLC/RiverHeath LLC must fill the power canal and the warehouse and other factory buildings on the Parcel 'B' according to the approved plans and specifications. Failure to abandon the power canal and the right end of the Lower Appleton Dam as described above will result in action by the Department to require proof of financial responsibility to maintain the dam and/or may nullify the property transfer, thereby causing the property to revert to ownership by Kaukauna Utilities. Until such time as the Department determines that the dam is abandoned according to the approved plans, the City of Kaukauna and Tanesay Development LLC/RiverHeath LLC shall remain responsible for the dam and for the safety of the public downstream from the dam.
31. The abandonment of the dam, including the filling of the Power Canal, shall be constructed in accordance with the approved Demolition Plan (sheet C1.3), specifications and grading plan, and shall be completed prior to any utility or building development within Parcel B.
32. Section 31.12(4), Wisconsin Statutes, requires a verified statement to be filed with the Department within 10 days after completion of the

construction/abandonment/removal of the dam, stating that it was constructed/abandoned/removed in accordance with the plans and specifications approved by the Department.

33. Within 1 year of the date of this approval, Tanesay Development LLC/RiverHeath LLC shall provide to the Department one copy of the completed Certified Survey Map (CSM) for the proposed development. The map shall include the CSM number and shall be recorded by the Outagamie County Register of Deeds.
34. Within 1 year of the date of this approval, Tanesay Development LLC/RiverHeath LLC shall provide to the Department a copy of the recorded easements listing the terms, limits, and conditions for easements listed on the drawing titled "Proposed Lot Layout, Block 55 & 56, 4th Ward Plat, Government Lot 2 & 3, Section 25, T21N, R17E, City of Appleton" sheet 1 of 1 as prepared by Omni Associates, and dated 6/7/07. Those easements are listed as "Power Canal Easement – A", "Power Canal Easement –B", and "Tail Race Easement –C".
35. Development in conjunction with this project, such as construction or filling, must conform to State Floodplain Management Standards and local zoning regulations.

Ground Water Monitoring

36. Monitoring points MW-17, MW-32, MW-33 and MW-49 must be maintained by Tanesay Development LLC/RiverHeath LLC in accordance with ch. NR 141, Wis. Adm. Code.
37. Upon completion of the habitat creation pond, Tanesay/RiverHeath is responsible to collect groundwater samples from MW-17, MW-32, MW-33 and MW-49 and analyze groundwater for sulfate. Collection and analysis is to continue on a semi-annual schedule.
38. A brief status update, including all historical sulfate data in tabular form for MW-17, MW-32, MW-33 and MW-49, laboratory analytical reports and chain of custody must be submitted to the Department for review within 60 days of receipt of the data. Refer to s. NR 724.17, Wis. Adm. Code for submittal details.
39. Semi-annual monitoring is to continue until it is determined by the Department that the excavation of the habitat creation pond did not cause an additional release of sulfate to groundwater that could present a threat to public health or welfare or cause a significant damaging effect on groundwater or surface water quality in accordance with s. NR 140.02(4), Wis. Adm. Code.
40. Upon approval by the Department, Tanesay/RiverHeath is responsible to abandon MW-17, MW-32, MW-33 and MW-49 in accordance with ch. NR 141, Wis. Adm. Code and provide documentation of abandonment to the Department.

41. All required reporting and correspondence in this section of the permit shall be submitted to the assigned Department Remediation and Restoration Hydrogeologist.

FINDINGS OF FACT

General

1. Mark Geall (Tanesay Development LLC/RiverHeath LLC) has filed an application for a permit to place structures on the bed of, grade in excess of 10,000 square feet on the bank of, create a connected enlargement to, and for a large dam abandonment and transfer of structures on the (Lower Appleton Dam) on the Fox River, located in the City of Appleton, Outagamie County, also described as S25, T21N, R17E.
2. The project will consist of developing a peninsula between Telulah Canal and the Fox River. The 12-acre parcel adjacent to the Fox River would be developed for mixed use, including condominiums, offices and retail space, and would include removal of existing buildings, construction of commercial/residential buildings and new public access to the Fox River via expanding existing trail system. Redevelopment of the site would require filling a 1.7 acre portion of Telulah Canal, abandoning a portion of the large dam north of Banta Court and constructing a second access to the site. The partial dam abandonment would include the power canal north of the hydropower headrace, and the secondary spillway. A 0.72 acre habitat creation backwater pond would be created on the property along the Fox River. Habitat enhancement along the shoreline of the Fox River at locations near project site will also occur. A storm water management/erosion control plan has been submitted.
3. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
4. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
5. The proposed project will not impact wetlands if constructed in accordance with this permit.
6. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 30.12(3m), 30.19(1), 30.19(4), 30.20, 31.12, 31.14, 31.18 and 31.185, Wisconsin Statutes and Chapters NR 102, 103, 115, 116, 117, 150, 299, 333 of the Wisconsin Administrative Code.
7. An electronic mail correspondence dated June 26, 2008 to Mark Geall (Tanesay Development LLC) from the Department requesting additional information regarding the proposed project.

8. An electronic mail correspondence dated July 10, 2008 to the Department from Martenson & Eisele, Inc. containing a revised grading plan with contours and cross-section.
9. An electronic mail correspondence dated July 11, 2008 from Pierce Engineers, Inc. describing (including plan sheet) the proposed cutoff/retaining wall that would be placed north of the intake canal for the hydro dam power house.
10. An electronic mail correspondence dated July 20, 2008 to the Department from Mark Geall (Tanesay Development LLC) containing a plan sheet showing location of cutoff/retaining wall.
11. An electronic mail correspondence dated July 15, 2008 to the Department from Hey and Associates, Inc. containing habitat comparison information, a fish removal plan and a monitoring/management plan.
12. A letter from the Department dated July 31, 2008 to Mark Geall (Tanesay Development LLC) providing project ideas/concepts that would be considered to offset the loss of surface water habitat beyond that proposed for the Telulah Pond (habitat creation) project.
13. A letter from Mark Geall (Tanesay Development LLC) dated August 4, 2008 to the Department stating that additional monies (\$50,000) will be set aside for additional habitat enhancement/restoration projects beyond what will be utilized for the proposed Telulah Pond (habitat creation) project. Projects will focus on the lower Telulah Park area and Peabody Park.
14. An electronic mail correspondence dated September 19, 2008 from Boardman Law Firm to the Department stating that property ownership from Kaukauna Utilities to the new land-holding entity, RiverHeath LLC had occurred.
15. An electronic mail correspondence dated October 2, 2008 from Mark Geall (Tanesay Development LLC) to the Department stating that RiverHeath LLC is the current property owner.

Dam Abandonment and Transfer

16. The right end of the Lower Appleton Dam, Field File #44.01 is owned by Kaukauna Utilities. This portion of the dam comprises several warehouses and other factory buildings, formerly owned by Consolidated Papers, and a hydroelectric generation facility. The drawing titled "Proposed Lot Layout, Block 55 & 56, 4th Ward Plat, Government Lot 2 & 3, Section 25, T21N, R17E, City of Appleton" sheet 1 of 1 as prepared by Omni Associates, and dated 6/7/07 shows the right end of the dam and divides the area by parcel.

17. Tanesay Development LLC/RiverHeath LLC intends to develop much of this property for future development into shops, condominiums and other residential and commercial property. The development would incorporate most of those areas as described in the said drawing and described as Parcel A and Parcel B.
18. The Department received a "Dam Ownership Transfer Application" dated May 1, 2008 from Kaukauna Utilities. The request is in conjunction with the abandonment of a portion of the Lower Appleton Dam currently owned by Kaukauna Utilities to Tanesay Development LLC/RiverHeath LLC.
19. Kaukauna Utilities intends to keep the hydroelectric generation facility within its ownership to continue to generate electricity. The area is described as Parcel C on said Drawing.
20. The former Consolidated Papers warehouses and other buildings (Parcel 'B' on OMNNI drawing 1 of 1) are considered to be part of (appurtenant to) the Lower Appleton Dam.
21. The hydroelectric generation facility (Parcel 'C' on OMNNI drawing 1 of 1) is considered to be part of (appurtenant to) the Lower Appleton Dam.
22. Tanesay Development LLC/RiverHeath LLC intends to abandon the right part of the Lower Appleton Dam that is the former Consolidated Papers warehouses and other buildings, Parcel 'B' of said drawing, by filling in the former power canal to eliminate the hydraulic head differential across the property, and thus, remove that property from the description of the dam. Tanesay/RiverHeath is required to abandon this part of the dam since Wisconsin law does not allow residential and commercial development on a dam.
23. Kaukauna Utilities and Tanesay Development LLC/RiverHeath LLC have jointly submitted plans to the Department as part of an application to abandon this portion of the Lower Appleton Dam. The plans include a Preliminary Certified Survey Map dated 8/20/2008 as prepared by Martenson & Eisele, Inc. with a revision date of 9/5/2008 and received by the Department on September 5, 2008.

Groundwater Monitoring

24. Pursuant to s. NR 140.28(1)(a), Wis. Adm. Code, "The Department may not approve a proposed facility, practice or activity at a location where a (PAL or ES) has been attained or exceeded unless an exemption has been granted under (s. NR 140.28)". Recent groundwater monitoring data at this site for the environmental repair case M-I, LLC, WDNR BRRTS #02-45-181585, indicates exceedances of the ch. NR 140, Wis. Adm. Code enforcement standard (ES) or preventive action limit (PAL) for sulfate at monitoring wells in the area of the proposed habitat creation pond. Specifically, MW-17A, MW-18, MW-19, MW-21, MW-21A, MW-31, MW-32, MW-33, MW-36, MW-38, MW-49 (off-site) and GPW-3R are within or immediately adjacent to

the footprint of the proposed habitat creation pond. Monitoring wells also present in the area without exceedances of the PAL include MW-17, MW-18A, MW-19A, MW-21B, MW-31B, MW-32B, MW-33B, MW-36B and GPW-3AR. Therefore, in order to allow construction of the required habitat creation pond, an exemption is needed.

25. The Department issued an exemption for sulfate in groundwater at this site on September 9, 2008 based on the *Wisconsin Administrative Code Chapter NR 140.28 Exemption Request* (Exemption Request) submitted by Shaw Environmental, Inc. (Shaw). Based on information provided in the Exemption Request the Department believes that excavation of the habitat creation pond is likely to cause an increase in sulfate concentrations in groundwater (*Sec. 4.0 Effects of Previous Remedial Actions*, Exemption Request). As a result, construction of the habitat creation pond is approved based on the condition stated in this permit.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.
2. The Department has examined plans for the Transfer and Abandonment of portions of the right side of the Lower Appleton Dam, Field File No. 44.01, currently owned by Kaukauna Utilities.
3. The review has been conducted in accordance with Chapters 1.11 and 31, Wisconsin Statutes, and Chapters NR 103, NR 333 and NR 116, Wisconsin Administrative Code.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case

hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted, and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Northeast Region Headquarters, Wisconsin on October 3, 2008.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By _____
Jon Brand
Water Management Specialist



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
SIBLEY SQUARE AT MEARS PARK
190 FIFTH STREET EAST, SUITE 401
ST. PAUL MN 55101-1638

October 15, 2008

Operations
Regulatory (2008-01720-NTD)

Mr. Mark Geall
Tanesay Development LLC
1335 N Dearborn Parkway
Chicago, Illinois 60610

Dear Mr. Geall:

We have reviewed information about a Tanesay Development LLC project to dewater and discharge fill material into approximately 1.7 acres of a manmade enlargement to the Fox River known as Telulah Canal. The purpose of the project is to facilitate redevelopment of a 12-acre parcel adjacent to the Fox River. The project also includes the construction of a 0.72 acre habitat enhancement backwater pond connected to the Fox River to offset the unavoidable adverse impacts of filling the canal. The project site is in the S ½ of Section 25, T.21N., R.17E., Outagamie County, Wisconsin.

We have determined that this work is eligible for authorization under GP-001-WI, a regional general permit which is limited to certain activities that are permitted or exempted by the Wisconsin Department of Natural Resources (WDNR) pursuant to Ch. 30 or Ch. 31, Wisconsin Statutes. The GP-001-WI authorization will remain valid as long as the WDNR permit or exemption remains valid, unless it is specifically suspended or rescinded for your project by the Corps.

This Federal authorization is **NOT VALID UNLESS AND UNTIL** a state permit, if necessary, is issued for the work by the WDNR. **Proceeding with work beforehand, may constitute a violation of Federal law.**

If the WDNR denies its permit for the work, the Corps will deny your application for Federal authorization without prejudice. In that event you may reapply for Federal authorization if you subsequently receive a WDNR permit or exemption.

Authorization of your project under GP-001-WI requires that you comply with all conditions of the enclosed permit and satisfy any limits and conditions of the WDNR permit. In addition, your project is subject to the following special conditions:

1. As compensation for 1.7 acres of unavoidable adverse impacts to aquatic resources within the permit area, the permittee shall:
 - a) Create and preserve a habitat enhancement backwater pond on-site consisting of a minimum of 0.72 acres of pond area and a minimum volume of 3.1 acre-feet at

the normal water level.

- b) Enhance a minimum of 1.43 acres of upland surrounding the backwater pond.
 - c) Perform additional compensatory mitigation, as proposed (shoreline restoration, aquatic habitat enhancement, etc.), to offset the temporal loss of habitat associated with the filling of Telulah Canal. A detailed plan documenting the additional mitigation shall be submitted no later than 120 days following the date of this permit.
2. The backwater pond and adjacent upland shall be established and maintained in accordance with Appendix F of the permit application and the supplemental plan titled: Telulah Mitigation Pond – Monitoring and Management Plan, prepared by Hey and Associates, Inc., dated July 14, 2008.
 3. All compensatory mitigation shall be completed prior to or concurrent with the authorized work. All earthwork, construction, and planting within the compensatory mitigation areas shall be completed no later than 120 days after the work authorized by this permit is completed.
 4. The 0.72 acre backwater pond and 1.43 acres of enhanced upland used for mitigation shall be protected in perpetuity by covenants or conservation easement or other land use restrictions acceptable to the District Engineer that prohibit incompatible uses. The covenants shall be reviewed and approved by the District Engineer, the approved covenants shall be recorded within 120 days of the completion of the project, and a certified copy of the recorded covenant shall be returned to this office.
 5. Monitoring reports are required: Annual mitigation monitoring reports shall be submitted on the status of the mitigation. The reports shall be submitted by December 31 following each of the first three growing seasons. The reports shall be forwarded to Nick Domer at: St. Paul District, Army Corps of Engineers, Regulatory Branch, 211 North Broadway, Suite 216, Green Bay, Wisconsin 54303. The reports shall, at a minimum, include the following information:
 - i) Monitoring information collected in accordance with the Telulah Mitigation Pond – Monitoring and Management Plan, prepared by Hey and Associates, Inc., dated July 14, 2008. All monitoring proposed in the plan shall be performed as specified in the plan.
 - ii) All plant species along with their percent cover, identified using standard plots and/or transects, with at least one representative plot/transect in each plant community within the mitigation site including upland buffers. In addition, the presence, location and percent cover of invasive and/or non-native species, such as purple loosestrife and common buckthorn, in any of plant communities shall be noted.
 - ii) Vegetation cover maps at an appropriate scale shall be submitted for each reported growing season.

- iii) Photographs showing all representative areas of the mitigation site taken at least once each reported growing season during the period of July 1 to September 30. Photographs shall be taken from a height of approximately five to six feet from at least one location per acre. Photos shall be taken from the same reference point and direction of view each reporting year.
 - iv) Water elevations and surface area within the backwater pond.
 - v) A functional analysis comparing the backwater pond to the pre-fill condition of Telulah Canal using the Habitat Suitability Index (HSI) method.
6. The site shall meet the following Success Criteria:
- i) Hydrology

A continuous hydrologic connection shall be maintained between the backwater pond and the Fox River and hydrology shall be sufficient to sustain a pond with a minimum of 0.72 acres of pond area and a minimum volume of 3.1 acre-feet.
 - ii) Vegetation:
 - (A) Aquatic: The backwater pond shall consist of approximately 25% areal coverage of native species and total vegetative cover within the backwater pond shall not exceed 30%.
 - (B) Herbaceous: Herbaceous communities within the upland enhancement area shall be dominated by 5 or more species of native grasses, sedges, forbs, and/or ferns and achieve approximately 95% or greater areal coverage of the total mitigation site by year 3.
 - (C) Control of Invasive and/or Non-Native Species: Control of invasive and/or non-native plant species shall be carried out for three full growing seasons. Control shall consist of physical removal, mowing, burning, disking, mulching, biocontrol and/or herbicide treatments. By the second growing season, any areas one-quarter acre in size or larger that have greater than 25 percent areal cover of invasive and/or non-native species shall be treated (e.g., herbicide) and/or cleared (e.g., disked) and then reseeded or planted. Follow-up control of invasive and/or non-native species shall be implemented as stated above. At the end of the third growing season the vegetative community shall not contain greater than 5 percent areal cover of invasive and/or non-native species. Failure to meet any of the above criteria shall extend the permittee's responsibility for monitoring and control of invasive/non-native species within the compensation site.
 - iii) Aquatic Habitat:

At the end of the third growing season, the backwater pond shall meet the HSI scores for targeted species (largemouth bass, black crappie, and bluegill) and colonization and/or use of the pond by these species shall be evident.

7. The Corps may, at any time during the three year monitoring period require removal, treatment or management of undesirable animal species, including physical removal, live trapping, confining wires or nets, etc.
8. If the performance criteria outlined above are not met at any time during the monitoring period, the permittee shall provide the Corps with a proposal detailing corrective actions and/or maintenance actions proposed (if any) and an implementation schedule for those actions. The permittee shall implement the necessary corrective measures following review and approval/modification of those measures by the Corps. Upon completion of corrective measures, the permittee shall provide a written summary of the work to the Corps. Additional remedial actions may be required if the corrective measures do not result in satisfaction of the performance criteria during the next growing season.
9. The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine that the compensatory mitigation has not been completed satisfactorily. Remedial work may include regrading and/or replanting the mitigation site. This responsibility shall extend for a period of 3 years beginning upon completion of mitigation site construction.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

If your project will require off-site fill material that is not obtained from a licensed commercial facility, you must notify us at least five working days before start of work. A cultural resources survey may be required if a licensed commercial facility is not used.

This letter contains an approved jurisdictional determination for your proposed project. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

James B. Wiseman, Jr.
Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
(601) 634-5820
(601) 634-5816 (fax)

Operations
Regulatory (2008-01720-NTD)

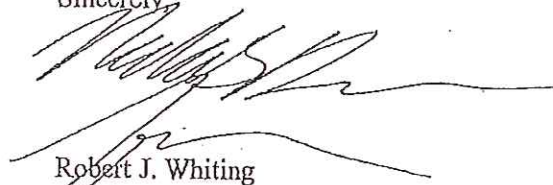
- 5 -

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by December 14, 2008.

It is not necessary to submit an RFA form to the division office if you do not object to the determination in this letter.

If you have any questions, contact Nick Domer in our Green Bay Office at (920) 448-2824. In any correspondence please refer to the Regulatory number shown above.

Sincerely,



Robert J. Whiting
Chief, Regulatory Branch

Enclosure

Copy Furnished: Jon Brand, WDNR (IP-NE-08-45-67266, IP-NE-45-67268)

DEPARTMENT OF THE ARMY PERMIT

Permittee: The General Public in Wisconsin

Permit No.: GP-001-WI

Issuing Office: St. Paul District
U.S. Army Corps of Engineers

Issuance Date: January 1, 2004

Expiration Date: December 31, 2008

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with all terms and conditions specified below.

Project Description: The general public in the State of Wisconsin is authorized to perform certain work that is regulated and approved by the Wisconsin Department of Natural Resources (WDNR) in waters of the United States pursuant to Wisconsin Statutes Chapter 30 or 31 (including Trans. 207 projects), and to perform work for public transportation projects that are in compliance with the WDNR-Wisconsin Department of Transportation (WDOT) liaison procedure under Wisconsin Statute 30.12(4), subject to all exclusions and conditions that follow.

Project Location: Waters of the U.S. in Wisconsin that are regulated by the (WDNR) pursuant to Wisconsin Statutes Chapter 30 or 31.

NOTE: Federal authorization under this general permit is NOT valid for any activity UNLESS AND UNTIL the project proponent has received BOTH a WDNR authorization and a Corps authorization letter for the project. APPLICANTS MUST RECEIVE BOTH A WDNR PERMIT AND AN AUTHORIZATION LETTER FROM THE CORPS BEFORE ANY WORK IS AUTHORIZED.

EXCLUDED ACTIVITIES. The following activities are not eligible for authorization under GP-001-WI:

1. Activities that are part of a project that would impact (drain, fill, or inundate) more than two acres of waters of the U.S.
2. Structures attendant to fleeting of barges are not authorized by this GP in any case.
3. Activities that are denied any required local, State, Tribal or Federal authorization.

4. Activities subject to a WDNR permit decision that is overturned by a court of law.
5. Activities in Navigable Waters of the U.S. (Federal "Section 10" waters) that, in the opinion of the St. Paul District of the Corps of Engineers, would have an unacceptable adverse effect on navigation.
6. Activities that the St. Paul District of the Corps of Engineers determines warrant further Federal evaluation to address the government's trust responsibility to American Indian Tribes.
7. Activities that the St. Paul District of the Corps of Engineers determines have potential to cause unacceptable adverse impacts on aquatic resources of national importance.
8. Activities that would have an adverse effect on a known archaeological site or cultural resources, or on Federally-listed endangered or threatened wildlife or plants or their critical habitat, unless those activities are subjected to review under the applicable procedures of Section 106 of the National Historic Preservation Act and/or Section 7 of the Endangered Species Act, as appropriate, and are determined to comply with those Acts.

PERMIT CONDITIONS:

1. The time limit for completing the work authorized under this general permit ends 3 years from the date of the WDNR authorization unless otherwise specified in the WDNR permit. If the WDNR permit is extended, the authorization issued under this general permit is extended for the same length of time.
2. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal, State, and local water quality and effluent standards on a continuing basis.
3. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.
4. If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark), the site must be securely diked or contained by some acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to the placement of any dredged material.
5. Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate

means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion.

6. All material (including riprap), if authorized under this permit, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or other material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain material, the State Historic Preservation Officer (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the St. Paul District Office.

7. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

8. An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

9. A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the State Department of Natural Resources and the U.S. Coast Guard at telephone number (800) 424-8802.

10. The following special condition is a part of all Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

HOW TO APPLY FOR AND RECEIVE AUTHORIZATION UNDER GP-001-WI:

To receive authorization under this general permit, the applicant must submit a permit application to the WDNR and provide a copy of the application to the St. Paul District. The District will review the application to determine whether or not the project is eligible for authorization under GP-001-WI. This review will include a determination of compliance with all of the above permit terms and conditions, including those concerning cultural resources, Federally-listed endangered or threatened wildlife or plants and the government's trust responsibility to American Indian Tribes. This review may include coordination with appropriate state or Federal agencies and/or Indian Tribes and will include coordination with the National Park Service for all projects on or in Federal Wild and Scenic Rivers.

The Corps authorization under this general permit will NOT be valid for the project UNTIL the applicant has received both a WDNR authorization and a Corps authorization letter for the project. APPLICANTS MUST RECEIVE BOTH A WDNR PERMIT AND AN AUTHORIZATION LETTER FROM THE CORPS BEFORE ANY WORK IS AUTHORIZED.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to (as applicable):

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reevaluation of Permit Decision. This office may reevaluate its decision on any permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

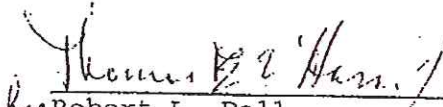
a. Any term or condition of a permit is not satisfied.

b. The information provided in support of a permit application proves to have been false, incomplete, or inaccurate.

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



for Robert L. Ball
Colonel, Corps of Engineers
District Engineer

24 DEC. 13

(DATE)

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 15-Oct-08

B. ST PAUL, MN DISTRICT OFFICE, FILE NAME, AND NUMBER: River Health Tanesay Development
2008-01720-NTD

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Wisconsin

County/parish/borough: Outagamie City: Kaukauna

Center coordinates of site (lat/long in degree decimal format): Lat. 44.260588° N Long. -88.386328° W
Universal Transverse Mercator:

Name of nearest waterbody: Fox River

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Fox River

Name of watershed or Hydrologic Unit Code (HUC): 04030204

Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

Office (Desk) Determination. Date: 22-April-2008

Field Determination. Date(s):

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain: The Fox River is a Section 10 water.

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or 1.7 acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM

Elevation of established OHWM (if known):

2. Non-regulated waters/wetlands (check if applicable):³

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: Fox River.

Summarize rationale supporting determination: The Fox River is a Section 10 water.

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent":

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size:
Drainage area:
Average annual rainfall: inches
Average annual snowfall: inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

- Tributary flows directly into TNW.
 Tributary flows through tributaries before entering TNW.

Project waters are river miles from TNW.
Project waters are river miles from RPW.
Project waters are aerial (straight) miles from TNW.
Project waters are aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain:

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵:
Tributary stream order, if known:

(b) General Tributary Characteristics (check all that apply):

Tributary is: Natural
 Artificial (man-made). Explain:
 Manipulated (man-altered). Explain:

Tributary properties with respect to top of bank (estimate):

Average width: feet
Average depth: feet
Average side slopes: Pick lists

Primary tributary substrate composition (check all that apply):

Silts Sands Concrete
 Cobbles Gravel Muck
 Bedrock Vegetation. Type/% cover:
 Other. Explain:

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain:

Presence of run/riffle/pool complexes. Explain:

Tributary geometry: Pick lists

Tributary gradient (approximate average slope): %

(c) Flow:

Tributary provides for: Pick lists

Estimate average number of flow events in review area/year: Pick lists

Describe flow regime:

Other information on duration and volume:

Surface flow is: Pick lists. Characteristics:

Subsurface flow: Pick lists. Explain findings:

Dye (or other) test performed:

Tributary has (check all that apply):

Bed and banks
 OHWM⁶ (check all indicators that apply):
 clear, natural line impressed on the bank the presence of litter and debris
 changes in the character of soil destruction of terrestrial vegetation
 shelving the presence of wrack line
 vegetation matted down, bent, or absent sediment sorting
 leaf litter disturbed or washed away scour
 sediment deposition multiple observed or predicted flow events
 water staining abrupt change in plant community
 other (list):

Discontinuous OHWM.⁷ Explain:

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

High Tide Line indicated by: Mean High Water Mark indicated by:
 oil or scum line along shore objects survey to available datum;
 fine shell or debris deposits (foreshore) physical markings;
 physical markings/characteristics vegetation lines/changes in vegetation types.
 tidal gauges
 other (list):

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain:

Identify specific pollutants, if known:

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ Ibid.

(iv) **Biological Characteristics. Channel supports (check all that apply):**

- Riparian corridor. Characteristics (type, average width):
- Wetland fringe. Characteristics:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain:

Wetland quality. Explain:

Project wetlands cross or serve as state boundaries. Explain:

(b) General Flow Relationship with Non-TNW:

Flow is: Pickle List. Explain:

Surface flow is: Pickle List

Characteristics:

Subsurface flow: Pickle List. Explain findings:

Dye (or other) test performed:

(c) Wetland Adjacency Determination with Non-TNW:

Directly abutting

Not directly abutting

Discrete wetland hydrologic connection. Explain:

Ecological connection. Explain:

Separated by berm/barrier. Explain:

(d) Proximity (Relationship) to TNW

Project wetlands are Pickle List river miles from TNW.

Project waters are Pickle List aerial (straight) miles from TNW.

Flow is from: Pickle List.

Estimate approximate location of wetland as within the Pickle List floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain:

Identify specific pollutants, if known:

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

- Riparian buffer. Characteristics (type, average width):
- Vegetation type/percent cover. Explain:
- Habitat for:
 - Federally Listed species. Explain findings:
 - Fish/spawn areas. Explain findings:
 - Other environmentally-sensitive species. Explain findings:
 - Aquatic/wildlife diversity. Explain findings:

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: Pickle List

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N) Size (in acres) Directly abuts? (Y/N) Size (in acres)

Summarize overall biological, chemical and physical functions being performed:

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:
2. Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:
3. Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW. Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. TNWs and Adjacent Wetlands. Check all that apply and provide size estimates in review area:
 - TNWs: linear feet width (ft), Or, 1.7 acres.
 - Wetlands adjacent to TNWs: acres.
2. RPWs that flow directly or indirectly into TNWs.
 - Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial:
 - Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally:

Provide estimates for jurisdictional waters in the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters:

3. Non-RPWs⁸ that flow directly or indirectly into TNWs.

- Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- Tributary waters: linear feet width (ft).
 Other non-wetland waters: acres.
Identify type(s) of waters:

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

 Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW:

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.

- Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.

- Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. Impoundments of jurisdictional waters.⁹

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- Demonstrate that impoundment was created from "waters of the U.S.," or
 Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED (INTERSTATE OR INTRA-STATE) WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 which are or could be used for industrial purposes by industries in interstate commerce.
 Interstate isolated waters. Explain:
 Other factors. Explain:

Identify water body and summarize rationale supporting determination:

⁸See Footnote # 3.

⁹To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

Provide estimates for jurisdictional waters in the review area (check all that apply):

Tributary waters: linear feet width (ft).

Other non-wetland waters: acres.

Identify type(s) of waters:

Wetlands: acres.

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain:

Other: (explain, if not covered above):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource:

Wetlands: acres.

SECTION IV: DATA SOURCES.

A. **SUPPORTING DATA.** Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant:

Data sheets prepared/submitted by or on behalf of the applicant/consultant.

Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps:

Corps navigable waters' study:

U.S. Geological Survey Hydrologic Atlas:

USGS NHD data.

USGS 8 and 12 digit HUC maps.

U.S. Geological Survey map(s). Cite scale & quad name:

USDA Natural Resources Conservation Service Soil Survey. Citation:

National wetlands inventory map(s). Cite name:

State/Local wetland inventory map(s):

FEMA/FIRM maps:

100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

Photographs: Aerial (Name & Date): Outagamie County 2005.

or Other (Name & Date):

Previous determination(s). File no. and date of response letter:

Applicable/supporting case law:

Applicable/supporting scientific literature:

Other information (please specify):

B. **ADDITIONAL COMMENTS TO SUPPORT JD:** The project involves filling approximately 1.7 acres of the Fox River known as Telulah Canal. The Fox River is a Section 10 waterway.

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: Tanesay Development, LLC. File Number: 2008-01720-NTD Date: Oct. 15, 2008

Attached is: See Section below

	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A. INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approve jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B. PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C. PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D. APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E. PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL OR OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTION OR INFORMATION

If you have question regarding this decision and/or the appeal process, you may contact:

Nicholas Domer
U.S. Army Corps of Engineers
Regulatory Branch
211 North Broadway, Suite 216
Green Bay, Wisconsin 54303
Telephone: (920) 448-2824

If you only have questions regarding the appeal process you may also contact:

Division Engineer
James B. Wiseman, Jr.
Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
(601) 634-5820
(601) 634-5816 (fax)

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15-day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date: _____

Telephone number: _____

Stage 1

Riverheath & Newberry
Opinion of Probable Cost - 5/7/13
City Names and Unit Prices

	Item	Unit	Contract Qty.	Unit Price	Amount
F&I	Lift Station	LS	1	\$70,000.00	\$ 70,000.00
F&I	4" Force Main	LF	74	\$30.00	\$ 2,220.00
	Abandon Hydrant	Each	2	\$200.00	\$ 400.00
F&I	Relocate Hydrant	Each	1	\$500.00	\$ 500.00
F&I	12" Water Main	LF	2,335	\$85.00	\$ 198,432.50
F&I	8" Water Main	LF	114	\$75.00	\$ 8,550.00
F&I	Hydrant Lead	LF	90	\$55.00	\$ 4,950.00
F&I	12" Gate Valve	Each	12	\$2,450.00	\$ 29,400.00
F&I	8" Gate Valve	Each	3	\$1,500.00	\$ 4,500.00
F&I	6" Gate Valve	Each	7	\$980.00	\$ 6,860.00
F&I	12" Bends	Each	15	\$450.00	\$ 6,750.00
F&I	8" Bends	Each	1	\$400.00	\$ 400.00
F&I	Hydrant	Each	5	\$2,950.00	\$ 14,750.00
F&I	Hydrant (8")	Each	1	\$2,950.00	\$ 2,950.00
F&I	1-1/4" Water Service	LF	82	\$40.00	\$ 3,280.00
F&I	Connected to Existing Service	Each	2	\$980.00	\$ 1,960.00
F&I	4" Rigid Insulation	SF	256	\$30.00	\$ 7,680.00
F&I	24" Steel Casing Bored and Jacked	LF	100	\$325.00	\$ 32,500.00
F&I	42" Storm Main	LF	32	\$90.00	\$ 2,880.00
F&I	36" Storm Main	LF	276	\$85.00	\$ 23,460.00
F&I	30" Storm Main	LF	331	\$70.00	\$ 23,170.00
F&I	24" Storm Main	LF	254	\$55.00	\$ 13,970.00
F&I	18" Storm Main	LF	115	\$52.00	\$ 5,980.00
F&I	15" Storm Main	LF	1,248	\$48.00	\$ 59,904.00
F&I	12" Inlet Lead	LF	453	\$52.00	\$ 25,116.00
F&I	Yard Drain	Each	3	\$650.00	\$ 1,950.00
F&I	Inlet with Casting- Type D	Each	1	\$450.00	\$ 450.00
F&I	96" Storm MH	VF	59	\$825.00	\$ 48,930.75
F&I	72" Storm MH	VF	27	\$425.00	\$ 11,381.50
F&I	60" Storm MH	VF	14	\$325.00	\$ 4,631.25
F&I	Std Storm MH	VF	85	\$225.00	\$ 19,170.00
F&I	Storm MH Casting	Each	34	\$625.00	\$ 21,250.00
F&I	36" Endwall	Each	1	\$750.00	\$ 750.00
F&I	Temporary Barrier	LF	240	\$50.00	\$ 12,000.00
F&I	Tracking Pad	Each	3	\$4,000.00	\$ 12,000.00
F&I	Silt Fence	LF	1,950	\$1.50	\$ 2,925.00
F&I	Clearing and Grubbing	LS	1	\$5,000.00	\$ 5,000.00
F&I	Topsoil Stripping	SY	9,100	\$3.00	\$ 27,300.00
F&I	Excavation	CY	3,085	\$5.00	\$ 15,425.00
F&I	Embankment (Fill to be Supplied by City/Others)	CY	13,687	\$5.00	\$ 68,433.75
F&I	Undercut	CY	253	\$8.00	\$ 2,024.40
F&I	Crushed Aggregate Base Course (6")	SF	25,365	\$1.15	\$ 29,169.75
F&I	Crushed Aggregate Base Course (12")	SY	8,490	\$10.25	\$ 87,022.50
	Street Grading, Base & Utilities				\$ 920,376.40

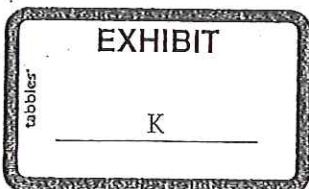
Engineering & Contingency (15%) \$ 138,056.46
Project Total \$ 1,058,432.86

Stage 2

F&I	Biofilter - North	LS	1	\$9,000.00	\$ 9,000.00
F&I	Biofilter - South	LS	1	\$2,000.00	\$ 2,000.00
F&I	Geoweb	SY	1,514	\$2.75	\$ 4,163.78
F&I	Fine Grading	SY	7,148	\$0.65	\$ 4,646.46
F&I	30" Curb & Gutter	LF	4,341	\$15.50	\$ 67,280.85
F&I	Concrete Pavement (8" Doweled)	SY	7,587	\$35.00	\$ 265,555.50
F&I	Reinforced Concrete Pavement	SY	375	\$40.00	\$ 15,000.00
F&I	Concrete Trail (10'x 5')	SF	21,168	\$2.95	\$ 62,445.60
F&I	Concrete Sidewalk (5'x4')	SF	1,339	\$2.60	\$ 3,480.75
F&I	Street Lights	Each	15	\$4,000.00	\$ 60,000.00
F&I	River Trail	Each	0	\$75,000.00	\$ -
F&I	Soil Stabilizer, Type B	SY	6,950	\$1.25	\$ 8,687.50
F&I	Erosion Mat	SY	6,950	\$1.25	\$ 8,687.50
F&I	Restoration	Acre	2	\$4,400.00	\$ 7,920.00
F&I	Guard Rail	LF	473	\$18.00	\$ 8,505.00
	Street Subtotal				\$ 527,372.94

Engineering & Contingency (15%) \$ 79,105.94
Project Total \$ 606,478.88

Street & Utility Total \$ 1,447,749.34
Engineering & Contingency (15%) \$ 217,162.40
Project Total \$ 1,664,911.74



State of Wisconsin
Department of Natural Resources

**CERTIFICATE OF COMPLETION
OF RESPONSE ACTIONS
UNDER SECTION 292.15(2)(ae), WIS. STATS.**

Whereas, Shaw Environmental Liability Solutions, LLC has applied for an exemption from liability under s. 292.15, Wis. Stats., for the property located at 1130 Banta Court, Appleton, Wisconsin, which is commonly referred to as the Banta Court Property, M-I, LLC Site, Consolidated Papers Site, or Kaukauna Utilities Site, further described in the legal description found on Attachment A (the "Property").

Whereas, an environmental investigation of the Property has been conducted and the Wisconsin Department of Natural Resources ("WDNR") has determined that environmental contamination exists at the Property;

Whereas, Shaw Environmental, LLC., has submitted to the WDNR certain investigation reports and a remedial action plan for the Property which comply with the requirements set forth in chs. NR 700-754, Wis. Adm. Code, consisting of the documents and reports listed in Attachment B;

Whereas, in accordance with s. 292.15(2)(ae), Wis. Stats., the WDNR has determined that an environmental investigation has been conducted which adequately identified and evaluated the nature and extent of the hazardous substance discharges on the Property and WDNR has approved of the site investigation and remedial action plan for the Property;

Whereas, on September 9, 2008, the WDNR has granted Shaw Environmental Liability Solutions, LLC an exemption under s. NR 140.28(2)(a), Wis. Adm. Code for having **sulfate**, a substance of public welfare concern, in the groundwater above the ch. NR 140 enforcement standard, having taken all technically and economically feasible actions;

Whereas, on September 1, 2009, the WDNR has granted Shaw Environmental Liability Solutions, LLC an exemption under s. NR 140.28(2)(b), Wis. Adm. Code for having **tetrachloroethylene ("PCE")**,



trichloroethylene ("TCE"), vinyl chloride, and benzene in the groundwater above the ch. NR 140 preventive action limit;

Whereas, **Shaw Environmental Liability Solutions, LLC** has paid to WDNR the appropriate insurance fee and has submitted a complete insurance application form to obtain coverage for the Property under the state's master insurance contract in accordance with s. 292.15(2)(ae)3m., Wis. Stats., and ch. NR 754, Wis. Adm. Code, based on their desire to use natural attenuation to remediate groundwater contamination that exceeds ch. NR 140, Wis. Adm. Code, groundwater quality enforcement standards;

Whereas, the Property with soil contamination that exceeds site-specific and/or generic residual contaminant levels ("RCLs") under ch. NR 720, Wis. Adm. Code, and groundwater contamination that exceeds a groundwater quality enforcement standard under ch. NR 140, Wis. Adm. Code, will be included on the WDNR's Geographical Information System data base ("the GIS Registry") pursuant to s. 292.12(3), Wis. Stats. **Shaw Environmental, LLC** has submitted to the WDNR all the information necessary to be included on the GIS Registry pursuant to s. NR 726.05(2)(a)3. and s. NR 726.05(3)(a)4., Wis. Adm. Code;

Whereas, on **September 1, 2009**, the WDNR issued case closure letters for the Property for the case "Banta Court Property" (WDNR BRRTS #02-45-548762 - Attachment C), and for the case "M-I, LLC" (WDNR BRRTS #02-45-181585 - Attachment D). On **February 19, 2009**, the Wisconsin Department of Commerce issued a case closure letter for the Property (Attachment E), for the case "M-I, LLC - Front Warehouse AST" (WDNR BRRTS #02-45-272992). The owner of this Property shall adhere to, abide by and maintain the land use controls and other requirements that are specified in the attached state case closure letters;

Whereas, the WDNR has determined that the fill brought onto the Property in the past does not qualify as exempt under s. NR 500.08, Wis. Adm. Code. Due to the non-exempt status of the fill, any person who proposes to redevelop or construct on the Property must obtain approval from the WDNR under s. NR 506.085, Wis. Adm. Code, prior to the initiation of any redevelopment of or construction on the Property. On May 12, 2008, WDNR issued a Conditional Grant of Exemption for Development of a Historic Fill Site, included as Attachment F. Proposed development on the Property that was not approved in the May 12, 2008 Conditional Grant of Exemption will require approval by the WDNR under s. NR 506.085, Wis. Adm. Code, prior to initiating any additional development of the Property.;

Whereas, if the requirements of case closure are not followed, the

WDNR may take actions under ss. 292.11 or 292.12, Wis. Stats., to ensure compliance with the specified requirements, and the person who owns or controls the Property may no longer qualify for the liability protections under s. 292.15, Wis. Stats.; and

Whereas, on **September 1, 2009**, the WDNR determined that response actions necessary to restore the environment to the extent practicable with respect to the discharges and to minimize the harmful effects from the discharges to air, land, and waters of the state were completed, except with respect to groundwater contaminated with **Arsenic, Benzene, and Chromium** above the ch. NR 140, Wis. Adm. Code, groundwater quality enforcement standards that the WDNR has determined will be brought into compliance through natural attenuation, in accordance with administrative rules promulgated by the WDNR.

Therefore, based upon the information that has been submitted to the WDNR, the WDNR hereby certifies that the response actions set forth in the WDNR approved remedial action plan for the Property and any other necessary response actions have been completed, except with respect to **Arsenic, Benzene, and Chromium** contaminated groundwater above ch. NR 140, Wis. Adm. Code, enforcement standards that WDNR has determined will be brought into compliance through natural attenuation, in accordance with rules promulgated by WDNR.

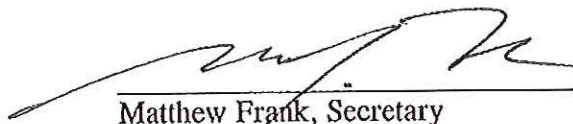
Upon issuance of this Certificate, **Shaw Environmental Liability Solutions, LLC** and the persons qualified for protection under s. 292.15(3), Wis. Stats., are exempt from the provisions of ss. 289.05(1), (2), (3) and (4), 289.42(1), 289.67, 291.25(1) to (5), 291.29, 291.37, 292.11(3), (4), and (7)(b) and (c) and 292.31(8), Wis. Stats., with respect to the existence of hazardous substances on or originating from the Property, the release of which occurred prior to the date the WDNR approved the environmental investigation required under s. 292.15(2)(ae)1., Wis. Stats. However, **Shaw Environmental Liability Solutions, LLC** and a person otherwise qualified for protection under s. 292.15(3), Wis. Stats., who owns or controls the Property would no longer qualify for this liability exemption if that person fails to maintain or monitor the Property as required by the conditions in this Certificate, the February 19, 2009 and September 1, 2009 case closure letters, s. 292.12, Wis. Stats., and administrative rules promulgated by the WDNR. Any discharges of a hazardous substance to or from the Property that occur after the date that the environmental investigation was approved will be the responsibility of the current Property owner and any other person who possesses or controls that discharge and any person who caused the discharge.

If natural attenuation fails, the insurance coverage under s. 292.15(2)(ae)3m., Wis. Stats., may be used to cover the costs of complying with s. 292.11(2), Wis. Stats., with respect to groundwater quality.

The protection from liability provided under s. 292.15(2), Wis. Stats., does not apply to any person who has obtained a Certificate of Completion by fraud or misrepresentation, or by the knowing failure to disclose material information or under circumstances in which **Shaw Environmental Liability Solutions, LLC** knew or should have known about more discharges of hazardous substances than was revealed by the investigation approved by the WDNR.

Nothing in this Certificate or in s. 292.15, Wis. Stats., affects the authority of the WDNR to exercise any powers or duties under applicable laws other than ss. 289.05(1), (2), (3) and (4), 289.42(1), 289.67, 291.25(1) to (5), 291.29, 291.37, 292.11(3), (4), and (7)(b) and (c) and 292.31(8), Wis. Stats., with respect to any release or threatened release of contaminants at the Property, or the right of the WDNR to seek relief available against any person who is not entitled to protection from liability under s. 292.15, Wis. Stats., with respect to such release or threatened release.

SIGNED AND CERTIFIED this 23rd day of October, 2009.



Matthew Frank, Secretary
Wisconsin Department of Natural Resources

ATTACHMENT A
LEGAL DESCRIPTION
M-I, LLC VPLE

See attached legal description from the Martenson & Eisele, Inc. Drawing No. 157-554, *Plat of Survey, Part of Blocks 55 and 56, Fourth Ward Plat, City of Appleton, Outagamie County, Wisconsin*, certified July 17, 2003 by WI Land Surveyor, Jerome H. Kaiser, S-2247

LEGAL DESCRIPTION OF SITE

Part of Blocks 55 and 56 , Fourth Ward Plat, City of Appleton, Outagamie County, Wisconsin more fully described as follows:

Commencing at the southwest corner of Block 58 of said Fourth Ward Plat where it intersects with the northerly line of lands owned by the Chicago and Northwestern Railroad Company; thence south 78 degrees 26 minutes 03 seconds West, 41.00 feet; thence North 16 degrees 27 minutes 39 seconds East, 116.31 feet to the point of beginning; thence along the westerly right-of-way of Vacated Newberry Street, South 31 degrees 24 minutes 29 seconds West, 69.80 feet; thence continuing along the Westerly right-of-way of Vacated Newberry Street, South 44 degrees 27 minutes 15 seconds West, 728.65 feet; thence along the Northerly right-of-way of John Street, North 62 degrees 38 minutes 12 seconds West, 162.39 feet to a point hereafter referred to as Point "A"; thence continuing along the Northerly right-of-way of John Street, 74 degrees 49 minutes 00 seconds West, 97.48 feet to a meander corner, being south 74 degrees 49 minutes 00 seconds East, 20 feet more or less from the waters edge of the Fox River; thence along a meander line North 31 degrees 28 minutes 32 seconds East, 1592.49 feet to a meander corner, being South 63 degrees 24 minutes 18 seconds East, 20 feet more or less from the water edge of the Fox River; thence along the Northerly line of Block 56 of said Fourth Ward Plat, South 63 degrees 24 minutes 18 seconds East, 130.51 feet; thence South 01 degrees 33 minutes 18 seconds East, 34.56 feet; thence South 09 degrees 15 minutes 57 seconds West, 107.81 feet; thence South 09 degrees 45 minutes 57 seconds West, 286.60 feet; thence South 11 degrees 25 minutes 56 seconds West, 211.40 feet; thence South 16 degrees 27 minutes 39 seconds West, 187.71 feet to the point of beginning.

and also:

thence commencing at said Point "A"; thence South 21 degrees 16 minutes 24 seconds West, 60.34 feet to the point of beginning; thence along the Southerly right-of-way of John Street, South 62 degrees 38 minutes 12 seconds East, 61.32 feet to a meander corner, being North 62 degrees 31 minutes 12 seconds West, 24 feet more or less from the waters edge of an existing canal; thence along a meander line South 47 degrees 24 minutes 57 seconds West, 405.62 feet to a meander corner being South 65 degrees 02 minutes 04 seconds East, 20 feet more or less from the waters edge of the Fox River; thence along a meander line North 23 degrees 43 minutes 50 seconds East, 360.04 feet to a meander corner being South 74 degrees 49 minutes 00 seconds East, 20 feet more or less from the waters edge of the Fox River; thence along the Southerly right-of-way of John Street, South 74 degrees 49 minutes 00 seconds East, 102.89 feet to the point of beginning.

Said Parcel contains 670,027 sq. ft. more or less [15.38 acres more or less], including all lands lying between the meander lines and the waters edge of the existing canal and the Fox River.

ATTACHMENT B
INVESTIGATION AND REMEDIAL ACTION PLAN REPORTS
M-I, LLC VPLE

2003

- *"Phase II Interim Action Construction Documentation Report, Former M-I Facility, 1130 East John Street, Appleton, Wisconsin, TSCI, October 2003.*

2004

- *Brownfield Site Assessment Grant Final Report (SAG-210) – Telulah Canal Investigation, Kaukauna Utilities, Kaukauna, Wisconsin, RMT, September 24, 2004.*

2007

- *"Site Investigation / Remedial Action Plan, M-I/Consolidated Papers/Kaukauna Utilities Site, 1130 Banta Court (East John Street), Appleton, Wisconsin, Shaw Environmental, Inc., February 2007.*

2008

- *"Wisconsin Administrative Code Chapter NR 140.28 Exemption Request, M-I LLC VPLE, 1130 Banta Court, Appleton, Wisconsin", Shaw Environmental, Inc., June 2, 2008.*
- *"Supplemental Site Investigation Report and Strategy for Site Closure, Revision-2, M-I/Consolidated Papers/Kaukauna Utilities Site, 1130 Banta Court (East John Street), Appleton, Wisconsin", Shaw Environmental, Inc., October, 2008.*
- *"Soil Management Plan, M-I/Consolidated Papers/Kaukauna Utilities Site, 1130 Banta Cour, Appleton, Wisconsin, Revision 1", Shaw Environmental, Inc., October 29, 2008.*

2009

- *"Remedial Implementation and Documentation Report, M-I/Consolidated Papers/Kaukauna Utilities Site, 1130 Banta Court, Appleton, Wisconsin", Shaw Environmental, Inc., February, 2009.*
- *"Closure Assessment Report, M-I/Consolidated Papers/Kaukauna Utilities Site, 1130 Banta Court (East John Street), Appleton, Wisconsin", Shaw Environmental, Inc., February, 2009.*

ATTACHMENT C
Closure Letter
M-I, LLC VPLE

See Attached September 1, 2009 Case Closure Letter, "Banta Court Property"



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Oshkosh Service Center
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731
TELEPHONE 920-424-3050
FAX 920-424-4404

September 1, 2009

JIM DROUGHT
SHAW ENVIRONMENTAL & INFRASTRUCTURE INC
111 W PLEASANT ST STE 105
MILWAUKEE WI 53212-3939

SUBJECT: Final Case Closure with Continuing Obligations
WDNR Site Name: Banta Court Property, 1130 Banta Court
(formerly John Street), Appleton, WI
WDNR BRRTS Activity #: 02-45-548762

Dear Mr. Drought:

On August 14, 2009, the Northeast Region Closure Committee reviewed the above referenced case at 1130 Banta Court in Appleton, Wisconsin ("the Property") for closure. This committee reviews environmental remediation cases for compliance with state laws and standards to maintain consistency in the closure of these cases.

Based on the correspondence and data provided, it appears that this case meets the closure requirements in ch. NR 726, Wisconsin Administrative Code. The Department considers this case closed and no further investigation or remediation is required at this time; however, current and future property owners must comply with certain continuing obligations as explained in this letter.

GIS Registry

This site will be listed on the Remediation and Redevelopment Program's GIS Registry. The specific reasons are summarized below:

- Residual soil contamination exists that must be properly managed should it be excavated or removed
- Groundwater contamination is present above Chapter NR 140 enforcement standards

This letter and information that was submitted with your closure request application will be included on the GIS Registry. To review the sites on the GIS Registry web page, visit the RR Sites Map page at <http://dnr.wi.gov/org/aw/rr/gis/index.htm>. If the property is listed on the GIS Registry because of remaining contamination and you intend to construct or reconstruct a well, you will need prior Department approval in accordance with s. NR 812.09(4)(w), Wis. Adm. Code. To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. This form can be obtained on-line <http://dnr.wi.gov/org/water/dwg/3300254.pdf> or at the web address listed above for the GIS Registry.

Closure Conditions

Please be aware that pursuant to s. 292.12 Wisconsin Statutes, compliance with the requirements of this letter is a responsibility to which the current property owner and any subsequent property owners must adhere. You must pass on the information about these continuing obligations to the next property owner or owners. If these requirements are not followed or if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, welfare, or the environment, the Department may take enforcement action under s. 292.11 Wisconsin Statutes to ensure compliance with the specified requirements, limitations or other conditions related to the property or this case may be reopened pursuant to s. NR 726.09, Wis. Adm. Code. The Department intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Soil Contamination

Residual soil contamination remains throughout the Property as indicated on the attached Figures 22A, 23A, 24A, 25A, 28B, 29A and 29B by Shaw (post-excavation residual arsenic, lead, toluene, diesel range organics (DRO) and polynuclear aromatic hydrocarbons (PAHs) in soil from zero to four feet below ground surface (bgs) and four to ten feet) and the attached Figure 2 by RMT (metals in Telulah Canal bottom, since dewatered) and in the information submitted to the Department of Natural Resources. If soil in the specific locations described above is excavated in the future, then pursuant to ch. NR 718 or, if applicable, ch. 289, Stats., and chs. 500 to 536, the property owner at the time of excavation must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present the property owner at the time of excavation will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans.

Filling of Former Telulah Canal

As of the date of this letter, the Department understands that RiverHeath, LLC is working with the Waste and Materials Management ("Waste") Program for a low hazardous waste exemption / approval ("the Approval") to excavate contaminated soils from the northern portion of the Property, and dispose of the soils on-site in the former Telulah Canal, dewatered in 2008. In July 2009, Oscar J. Boldt Construction ("Boldt") the developer for RiverHeath, LLC, placed an 18-inch compacted concrete cap over the dewatered canal bottom (approximately 11,000 tons of crushed concrete and clean demolition materials) to eliminate the direct contact concern with the impacted canal bottom, created by the dewatering of the Telulah Canal. According to the document, *RiverHeath Canal Fill Recommendations*, dated April 16, 2009 from River Valley Testing Corp. and addressed to Boldt, approximately nine feet of material (contaminated soils) are planned to be placed above the concrete cap followed by a four foot layer of clay and road sub-base or topsoil to final grade. The final details of placement of the contaminated soil and additional cover will be determined by the Waste Program. A copy of the Recommendations can be obtained in the case file in Oshkosh. Once issued, a copy of the Approval can be obtained from the Waste Program in Green Bay.

Residual Groundwater Contamination

Groundwater impacted by arsenic and benzene contamination greater than enforcement standards set forth in ch. NR140, Wis. Adm. Code, is present on this contaminated property. For more detailed information regarding the locations where groundwater samples have been collected (i.e., monitoring well locations) and the associated contaminant concentrations, refer to the Remediation and Redevelopment Program's GIS Registry at the RR Sites Map page at <http://dnr.wi.gov/org/aw/rr/gis/index.htm>.

Dewatering Permits

The Department's Watershed Management Program regulates point source discharges of contaminated water, including discharges to surface waters, storm sewers, pits or to the ground surface. This includes discharges from construction related dewatering activities, including utility and building construction.

Based on the concentrations of contaminants remaining in groundwater at this location, it appears likely that dewatering activities would require a permit from the Watershed Management Program. If you or any other person plan to conduct such activities, you or that person must contact that program, and if necessary, apply for the necessary discharge permit. Additional information regarding discharge permits is available at <http://www.dnr.state.wi.us/org/water/wm/www/>.

Development at Historic Fill Site or Licensed Landfill Exemption

On May 12, 2008, the Department issued a " Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed, 1130 Banta Court, Appleton, WI" (the "Exemption") to Shaw Environmental, Inc. regarding the proposed remediation and redevelopment of the Property. A copy of the Exemption can be obtained in the case file in Oshkosh.

Chapter NR 140, Wis. Adm. Code Exemption

Recent groundwater monitoring data at this site indicates that for tetrachloroethylene ("PCE") and vinyl chloride at GPW-2, benzene at MW-14A and trichloroethylene ("TCE") and vinyl chloride at monitoring well, MW-41, contaminant levels exceed the NR 140 preventive action limit (PAL) but are below the enforcement standard (ES). The Department may grant an exemption to a PAL for a substance of public health concern, other than nitrate, pursuant to s. NR 140.28(2)(b), Wis. Adm. Code, if all of the following criteria are met:

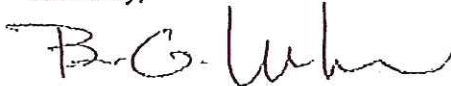
1. The measured or anticipated increase in the concentration of the substance will be minimized to the extent technically and economically feasible.
2. Compliance with the PAL is either not technically or economically feasible.
3. The enforcement standard for the substance will not be attained or exceeded at the point of standards application. [Note: at this site the point of standards application is all points where groundwater is monitored.]

4. Any existing or projected increase in the concentration of the substance above the background concentration does not present a threat to public health or welfare.

Based on the information you provided; the Department believes that these criteria have been or will be met based on long-term historical monitoring and the remedial action excavation in November and December 2008. Therefore, pursuant to s. NR 140.28, Wis. Adm. Code, an exemption to the PAL is granted for PCE and vinyl chloride at GPW-2, benzene at MW-14A and TCE and vinyl chloride at monitoring well, MW-41. Please keep this letter, because it serves as your exemption.

The Department appreciates your efforts to restore the environment at this site. If you have any questions regarding this closure decision or anything outlined in this letter, please contact Jennifer Borski at (920) 424-7887.

Sincerely,



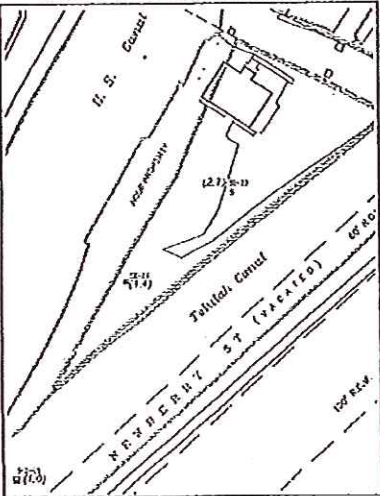
Bruce Urben, Team Supervisor
Northeast Remediation & Redevelopment Program

Attachments:

- Figure 22A, *Residual Soil Arsenic Distribution in Soil 0 to 4 Feet*
- Figure 23A, *Residual Soil Arsenic Distribution in Soil 4 to 8 Feet*
- Figure 24A, *Residual Soil Lead Distribution in Soil 0 to 4 Feet*
- Figure 25A, *Residual Soil Lead Distribution in Soil 4 to 10 Feet*
- Figure 28B, *Soil Toluene Groundwater Pathway Exceedances in Soil 4 to 12 Feet*
- Figure 29A, *Residual Soil Exceedances of PAH Distribution & DRO in Soil 0 to 4 Feet*
- Figure 29B, *Residual Soil Exceedances of PAH Distribution & DRO in Soil 4 to 8 Feet*
- Figure 2, *Kaukauna Utilities Telulah Canal Investigation, Sediment Sample Locations, by RMT*

Copy: M. Geall, RiverHeath LLC
J. Feldt, Kaukauna Utilities
K. Harkness, City of Appleton
B. Phelps, DNR – Madison, DG/5
J. Brand, DNR – Green Bay
J. Borski, DNR – Oshkosh

LOCK 4 - FOX RIVER AREA INSET

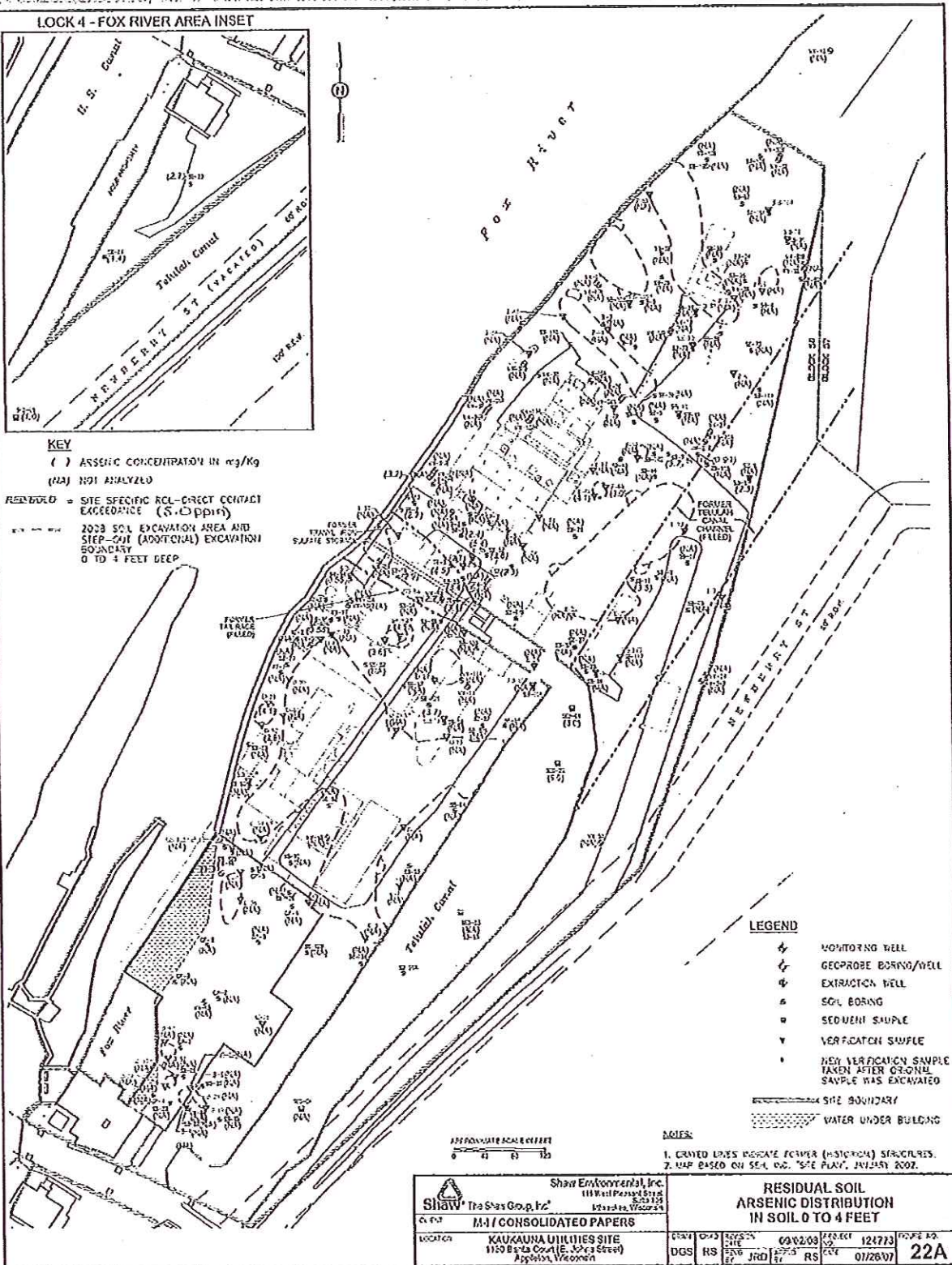


KEY

- () ARSENIC CONCENTRATION IN mg/Kg
- (NA) NOT ANALYZED

RESIDUAL = SITE SPECIFIC RCL-DIRECT CONTACT EXCEEDANCE (S.C)ppm

2023 SOIL EXCAVATION AREA AND STEP-DOWN (ADDITIONAL) EXCAVATION BOUNDARY 0 TO 4 FEET DEEP



LEGEND

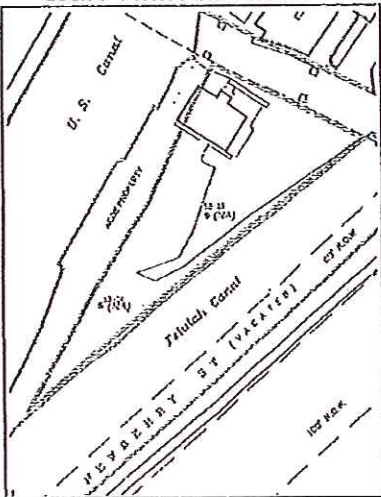
- ⊕ MONITORING WELL
- ⊕ GEOPROBE BORING/WELL
- ⊕ EXTRACTION WELL
- ⊕ SOIL BORING
- ⊕ SEDIMENT SAMPLE
- ⊕ VERIFICATION SAMPLE
- ⊕ NON-VERIFICATION SAMPLE TAKEN AFTER ORIGINAL SAMPLE WAS EXCAVATED
- SITE BOUNDARY
- ▨ WATER UNDER BUILDING

NOTES:

1. CRAYED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.
2. MAP BASED ON SET. NO. "SITE PLAN", JANUARY 2007.

Shaw Environmental, Inc. 111 West Pennant Street Madison, Wisconsin 53703		RESIDUAL SOIL ARSENIC DISTRIBUTION IN SOIL 0 TO 4 FEET	
CLIENT: MA / CONSOLIDATED PAPERS		DATE: 02/28/08	PROJECT NO: 124773
LOCATION: KAUKAUNA UTILITIES SITE 1150 Banta Circle (E. 34th Street) Appleton, Wisconsin	DRAWN BY: JRD CHECKED BY: RS	DATE: 01/26/07	SHEET NO: 22A

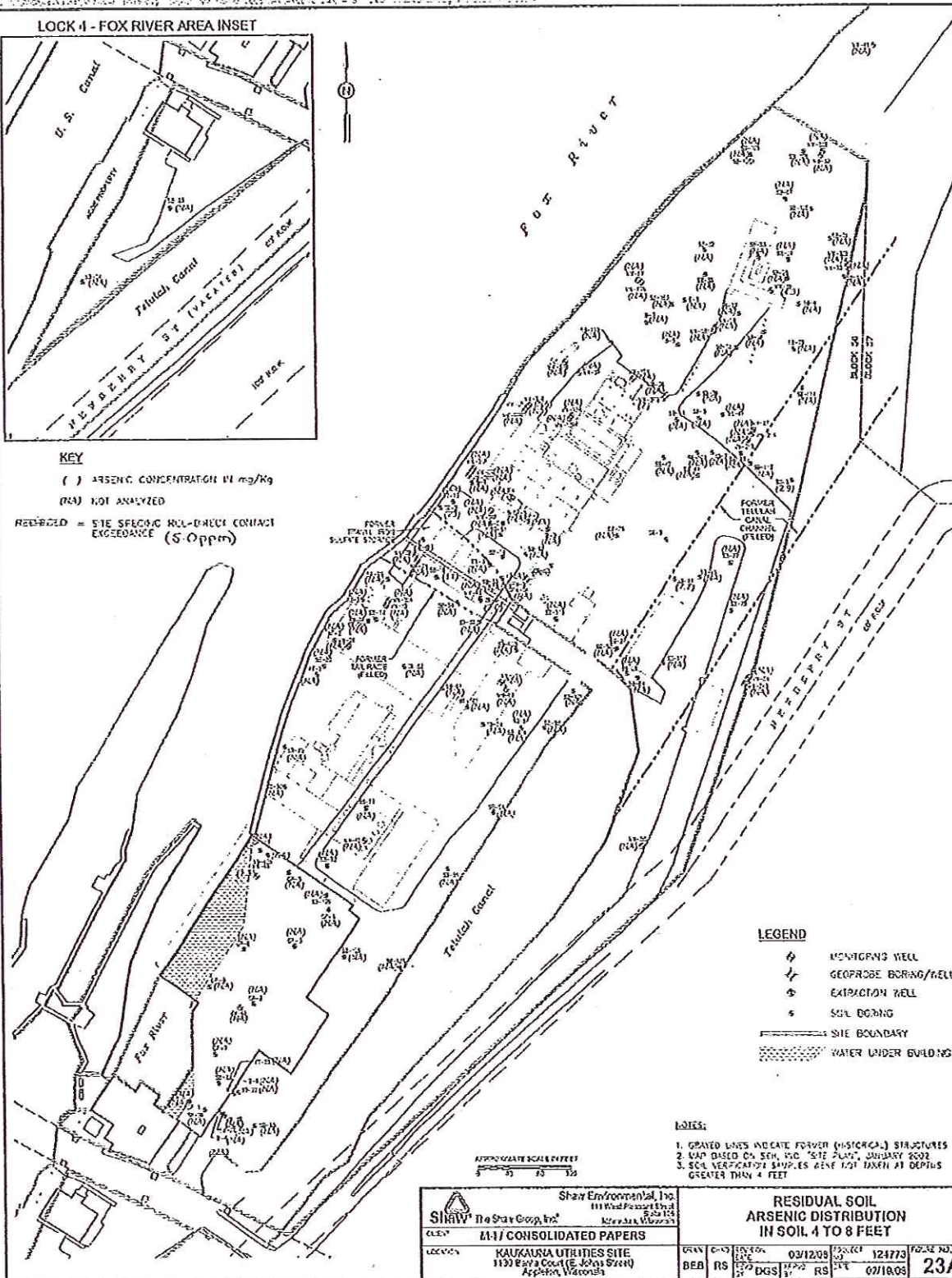
LOCK 4 - FOX RIVER AREA INSET



KEY

- () ARSENIC CONCENTRATION IN mg/Kg
- (NA) NOT ANALYZED

RED-HEADED = SITE SPECIFIC RUL-DRECT CONTACT EXCEEDANCE (S Oppm)



LEGEND

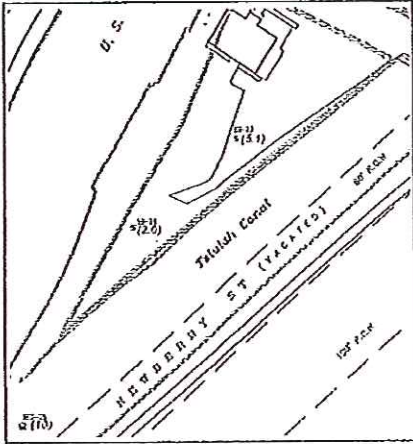
- ◇ MONITORING WELL
- ◇ GEOPROBE BORING/WELL
- ◇ EXTRACTION WELL
- ◇ SOIL BORING
- SITE BOUNDARY
- ▨ WATER UNDER BUILDINGS

NOTES:

1. GRANT LINES INDICATE FORMER (DISCRED.) STRUCTURES
2. MAP BASED ON SCA. AND 'SITE PLAN', JANUARY 2002
3. SOIL VERTICAL PROFILE SAMPLES WERE 12" INLEN AT DEPTHS GREATER THAN 4 FEET

<p>Shaw Environmental, Inc. 111 West Pennsylvania Knoxville, Tennessee 37902 615-251-1100</p>		<p>RESIDUAL SOIL ARSENIC DISTRIBUTION IN SOIL 4 TO 8 FEET</p>	
<p>Shaw No Star Corp. Inc. 111 West Pennsylvania Knoxville, Tennessee 37902 615-251-1100</p>		<p>DATE: 02/12/03 PROJECT: 123173 REV: 02/18/03</p>	
<p>PROJECT: KAUKAURA UTILITIES SITE 1130 E. 1st St. (E. 1st St. SW) Ashtabula, Virginia</p>		<p>CLIENT: BEB</p>	<p>SCALE: RS DATE: 02/18/03</p>
		<p>23A</p>	

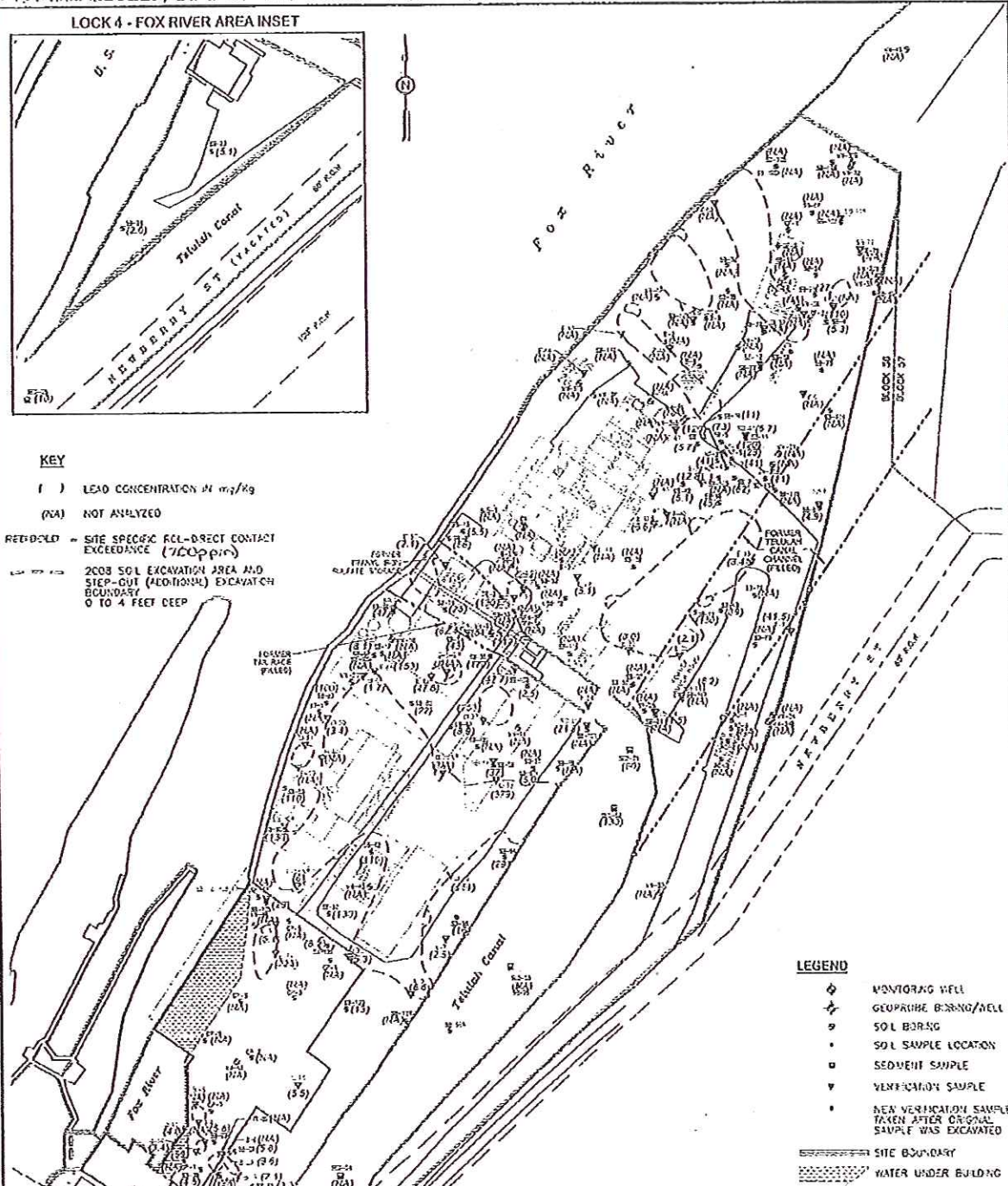
LOCK 4 - FOX RIVER AREA INSET



KEY

- () LEAD CONCENTRATION IN mg/kg
- (NA) NOT ANALYZED

- REF: Dotted line - SITE SPECIFIC REL-DIRECT CONTACT EXCEEDANCE (700ppm)
- REF: Dashed line - 2003 SOIL EXCAVATION AREA AND STEP-CUT (ADDITIONAL) EXCAVATION BOUNDARY 0 TO 4 FEET DEEP



LEGEND

- ◇ MONITORING WELL
- ⊕ GEOPHYSICAL BORING/WELL
- SOIL BORING
- SOIL SAMPLE LOCATION
- SEDIMENT SAMPLE
- ▽ VERIFICATION SAMPLE
- RE-ANALYSIS SAMPLE TAKEN AFTER ORIGINAL SAMPLE WAS EXCAVATED
- SITE BOUNDARY
- ▨ WATER UNDER BUILDING

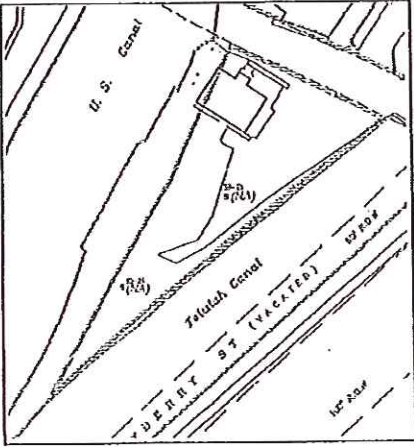
NOTES:

1. GRAVED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.
2. MAP BASED ON SDI, INC. "SITE PLAN", JANUARY 2002.

APPROXIMATE SCALE IN FEET
0 25 50 75

<p>Shaw Environmental, Inc. 111 West Park Street Waukegan, IL 60087</p>		<p>FILE</p> <p>RESIDUAL SOIL LEAD DISTRIBUTION IN SOIL 0 TO 4 FEET</p>	
<p>CLIENT: M/I CONSOLIDATED PAPERS</p>		<p>DATE: 03/20/08</p>	
<p>LOCATION: KAUKAUA UTILITIES SITE 1130 B-14 Court (E. 14th Street) Appleton, Wisconsin</p>		<p>DATE: 03/20/08</p>	<p>PROJECT NO: 124773</p>
<p>APPRAISER: JRD</p>		<p>DATE: 11/07/07</p>	<p>MAP NO: 24A</p>

LOCK 4 - FOX RIVER AREA INSET

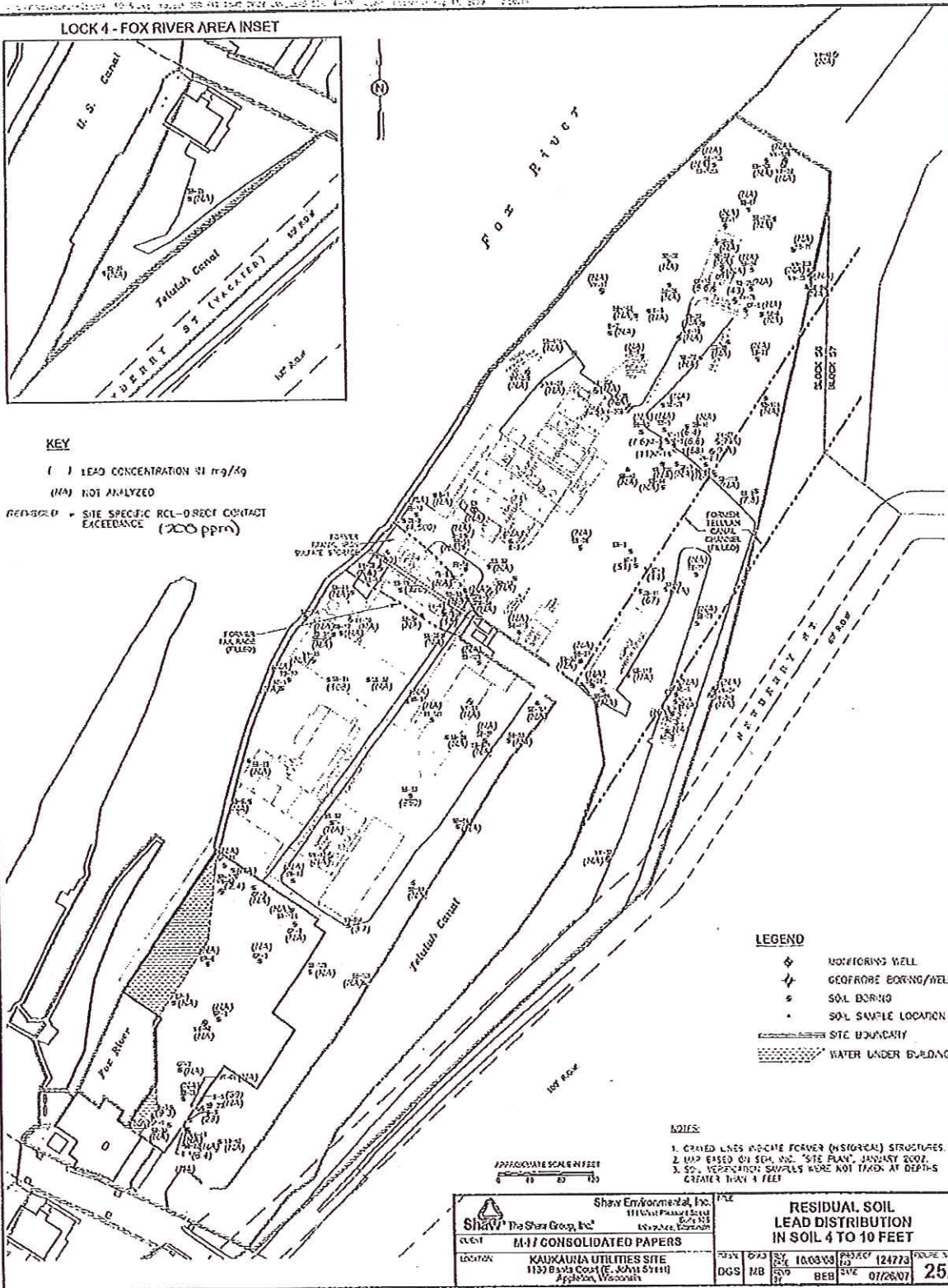


KEY

() LEAD CONCENTRATION IN mg/kg

(NA) NOT ANALYZED

RESIDUAL - SITE SPECIFIC RCL-DIRECT CONTACT EXCEEDANCE (>200 ppb)



LEGEND

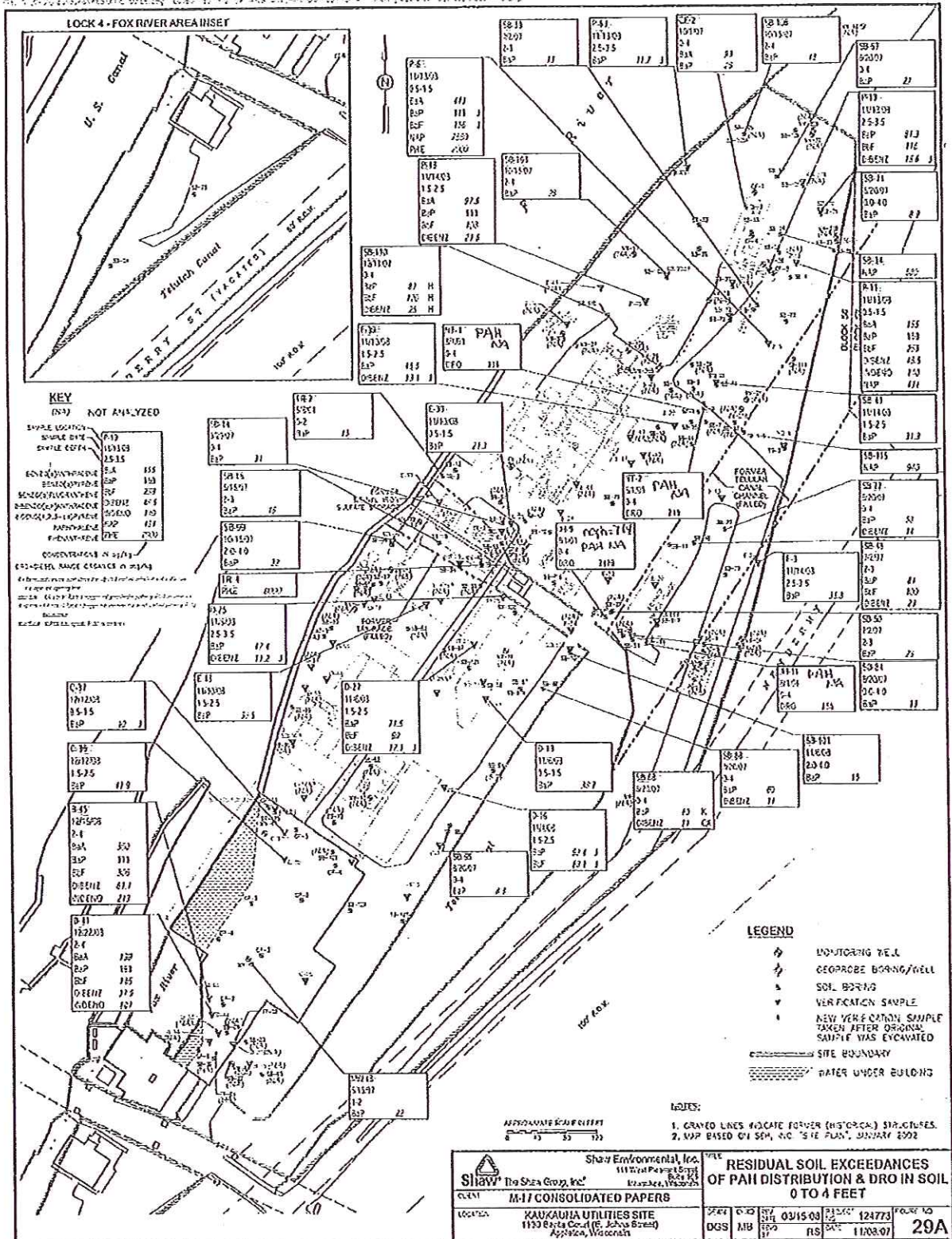
- ◇ MONITORING WELL
- ◆ GEOPHORE BORING/WELL
- SOIL BORING
- SOIL SAMPLE LOCATION
- SITE BOUNDARY
- ▨ WATER UNDER BUILDING

NOTES

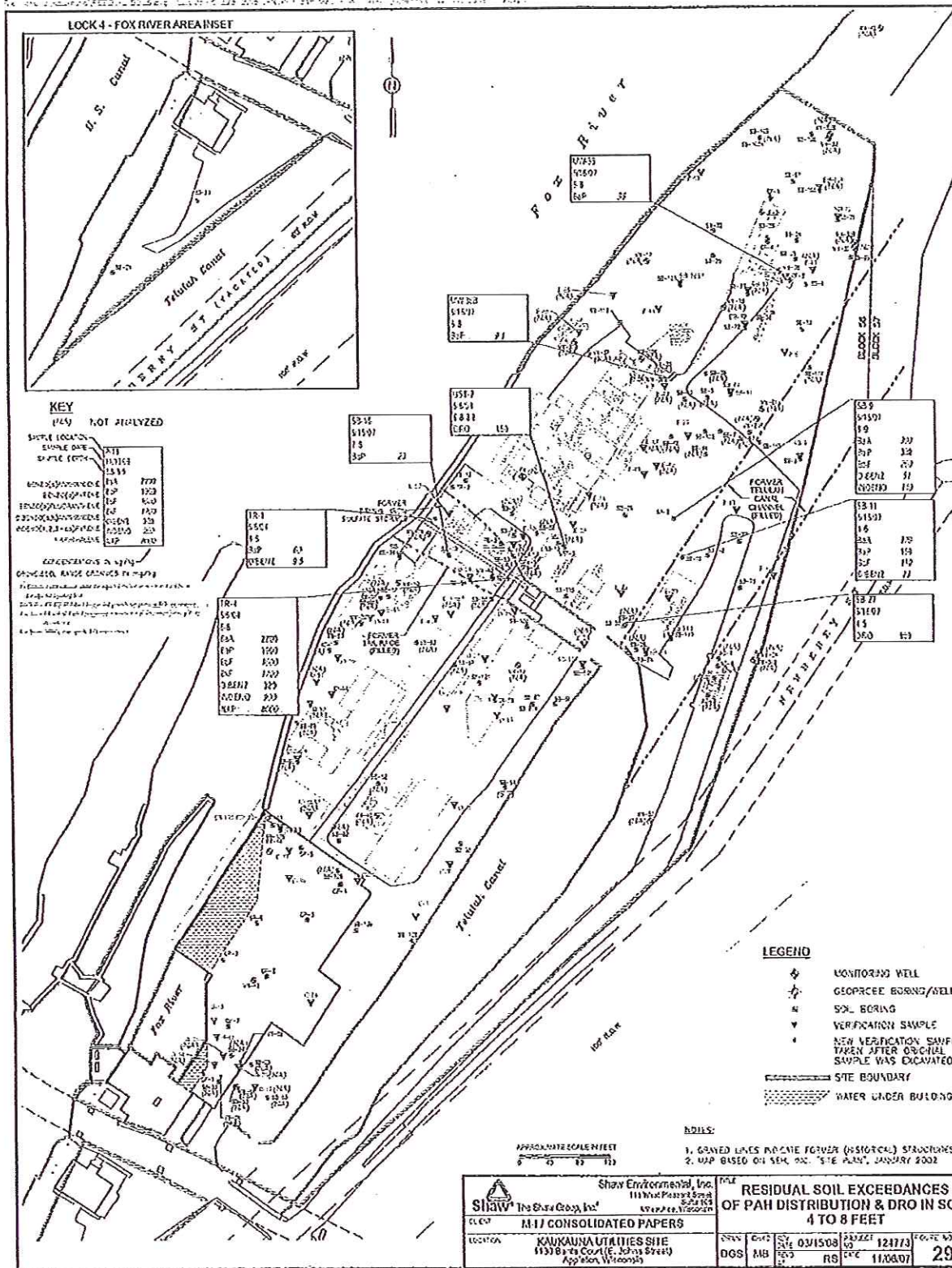
1. DASHED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.
2. MAP BASED ON SD4, INC. "SITE PLAN", JANUARY 2002.
3. SOIL VEGETATION SAMPLES WERE NOT TAKEN AT DEPTHS GREATER THAN 4 FEET.

APPROXIMATE SCALE IN FEET
0 25 50

Shaw Environmental, Inc. 1111 West Park Road ESSEX, ILLINOIS 62701		RESIDUAL SOIL LEAD DISTRIBUTION IN SOIL 4 TO 10 FEET	
CLIENT	M-17 CONSOLIDATED PAPERS	DATE	07/26/07
LOCATION	KAUKAUNA UTILITIES SITE 1150 Balsa Court (E. John Street) Appleton, Wisconsin	PROJECT NO.	124773
		DATE	07/26/07
		SCALE	25A



remaining unsat soil > DC RCL @ 0-4' OR > GW RCL



ATTACHMENT D
Closure Letter
M-I, LLC VPLE

See Attached September 1, 2009 Case Closure Letter, "M-I, LLC"



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Oshkosh Service Center
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731
TELEPHONE 920-424-3050
FAX 920-424-4404

September 1, 2009

JIM DROUGHT
SHAW ENVIRONMENTAL & INFRASTRUCTURE INC
111 W PLEASANT ST STE 105
MILWAUKEE WI 53212-3939

SUBJECT: Final Case Closure with Continuing Obligations
WDNR Site Name: M-I, LLC, 1130 Banta Court (formerly John St.), Appleton, WI
WDNR BRRTS Activity #: 02-45-181585

Dear Mr. Drought:

On August 14, 2009, the Northeast Region Closure Committee reviewed the above referenced case at 1130 Banta Court in Appleton, Wisconsin ("the Property") for closure. This committee reviews environmental remediation cases for compliance with state laws and standards to maintain consistency in the closure of these cases.

Based on the correspondence and data provided, it appears that this case meets the closure requirements in ch. NR 726, Wisconsin Administrative Code. The Department considers this case closed and no further investigation or remediation is required at this time; however, current and future property owners must comply with certain continuing obligations as explained in this letter.

GIS Registry

This site will be listed on the Remediation and Redevelopment Program's GIS Registry. The specific reasons are summarized below:

- Residual soil contamination exists that must be properly managed should it be excavated or removed
- Groundwater contamination is present above Chapter NR 140 enforcement standards

This letter and information that was submitted with your closure request application will be included on the GIS Registry. To review the sites on the GIS Registry web page, visit the RR Sites Map page at <http://dnr.wi.gov/org/aw/rr/gis/index.htm>. If the property is listed on the GIS Registry because of remaining contamination and you intend to construct or reconstruct a well, you will need prior Department approval in accordance with s. NR 812.09(4)(w), Wis. Adm. Code. To obtain approval, Form 3300-254 needs to be completed and submitted to the DNR Drinking and Groundwater program's regional water supply specialist. This form can be obtained on-line <http://dnr.wi.gov/org/water/dwg/3300254.pdf> or at the web address listed above for the GIS Registry.

Closure Conditions

Please be aware that pursuant to s. 292.12 Wisconsin Statutes, compliance with the requirements of this letter is a responsibility to which the current property owner and any subsequent property owners must adhere. You must pass on the information about these continuing obligations to the next property owner or owners. If these requirements are not followed or if additional information regarding site conditions indicates that contamination on or from the site poses a threat to public health, safety, welfare, or the environment, the Department may take enforcement action under s. 292.11 Wisconsin Statutes to ensure compliance with the specified requirements, limitations or other conditions related to the property or this case may be reopened pursuant to s. NR 726.09, Wis. Adm. Code. The Department intends to conduct inspections in the future to ensure that the conditions included in this letter are met.

Residual Soil Contamination

Residual soil contamination remains throughout the Property as indicated on the attached Figures 33, 34, 35 and 36 (post-excavation residual chromium and sulfate distributions in soil from zero to four feet below ground surface and four feet to bedrock, respectively) and in the information submitted to the Department of Natural Resources. If soil in the specific locations described above is excavated in the future, then pursuant to ch. NR 718 or, if applicable, ch. 289, Stats., and chs. 500 to 536, the property owner at the time of excavation must sample and analyze the excavated soil to determine if residual contamination remains. If sampling confirms that contamination is present the property owner at the time of excavation will need to determine whether the material is considered solid or hazardous waste and ensure that any storage, treatment or disposal is in compliance with applicable standards and rules. In addition, all current and future owners and occupants of the property need to be aware that excavation of the contaminated soil may pose an inhalation or other direct contact hazard and as a result special precautions may need to be taken to prevent a direct contact health threat to humans.

Residual Groundwater Contamination

Groundwater impacted by chromium and sulfate contamination (and color) greater than enforcement standards set forth in ss. NR140.10 and NR 140.20, Wis. Adm. Code, is present on this contaminated property and sulfate greater than the enforcement standard is present off this contaminated property. Off-property owners have been notified of the presence of groundwater contamination. For more detailed information regarding the locations where groundwater samples have been collected (i.e., monitoring well locations) and the associated contaminant concentrations, refer to the Remediation and Redevelopment Program's GIS Registry at the RR Sites Map page at <http://dnr.wi.gov/org/aw/rr/gis/index.htm>.

Dewatering Permits

The Department's Watershed Management Program regulates point source discharges of contaminated water, including discharges to surface waters, storm sewers, pits or to the ground surface. This includes discharges from construction related dewatering activities, including utility and building construction.

Based on the concentrations of contaminants remaining in groundwater at this location, it appears likely that dewatering activities would require a permit from the Watershed Management Program. If you or any other person plan to conduct such activities, you or that

person must contact that program, and if necessary, apply for the necessary discharge permit. Additional information regarding discharge permits is available at <http://www.dnr.state.wi.us/org/water/wm/ww/>

Development at Historic Fill Site or Licensed Landfill Exemption

On May 12, 2008, the Department issued a "Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed, 1130 Banta Court, Appleton, WI" (the "Exemption") to Shaw Environmental, Inc. regarding the proposed remediation and redevelopment of the Property. A copy of the Exemption can be obtained in the case file in Oshkosh.

Chapter NR 140, Wis. Adm. Code Exemption

On September 9, 2008, the Department issued a "NR 140.28 Exemption for Sulfate in Groundwater" that allowed for submittal of a request for closure under ch. NR 726, Wis. Adm. Code. In that letter, the Department granted an exemption to the enforcement standard for sulfate at the monitoring points listed. A copy of the exemption is attached.

Chapter 30 Permit Requirements

The Department's Water Division issued a Chapter 30 permit on October 3, 2008 to Tanesay Development, LLC / RiverHeath, LLC, ("RiverHeath") allowing for the abandonment of the Telulah Canal, creation of the Telulah Pond and construction of the mixed-use neighborhood with detailed conditions. Permit items #36 - 41 include the requirement for on-going analysis of groundwater from monitoring wells, MW-17, MW-32, MW-33 and MW-49 and submittal of documentation to the Department. In a letter dated May 10, 2009, RiverHeath accepted responsibility for the monitoring wells listed above. The locations of the wells are shown on the attached Figure 35A, Sulfate Distribution in Water Table Wells. A copy of the Chapter 30 permit can be obtained in the case file in Oshkosh or from the Water Management Specialist in Green Bay.

Filling of Former Telulah Canal

As of the date of this letter, the Department understands that RiverHeath, LLC is working with the Waste and Materials Management ("Waste") Program for a low hazardous waste exemption / approval ("the Approval") to excavate contaminated soils from the northern portion of the Property, and dispose of the soils on-site in the former Telulah Canal, dewatered in 2008. In July 2009, Oscar J. Boldt Construction ("Boldt") the developer for RiverHeath, LLC, placed an 18-inch compacted concrete cap over the dewatered canal bottom (approximately 11,000 tons of crushed concrete and clean demolition materials) to eliminate the direct contact concern with the impacted canal bottom, created by the dewatering of the Telulah Canal. According to the document, *RiverHeath Canal Fill Recommendations*, dated April 16, 2009 from River Valley Testing Corp. and addressed to Boldt, approximately nine feet of material (contaminated soils) are planned to be placed above the concrete cap followed by a four foot layer of clay and road sub-base or topsoil to final grade. The final details of placement of the contaminated soil and additional cover will be determined by the Waste Program. A copy of the Recommendations can be obtained in the case file in Oshkosh. Once issued, a copy of the Approval can be obtained from the Waste Program in Green Bay.

September 1, 2009

Final Case Closure with Continuing Obligations
WDNR Site Name: M-I, LLC, 1130 Banta Court, Appleton, WI
WDNR BRRTS Activity #: 02-45-181585

Page 4 of 4

Post-Closure Notification Requirements

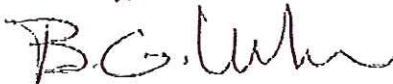
In accordance with ss, 292.12 and 292.13, Wis. Stats., the property owner must notify the Department before making changes that affect or relate to the conditions of closure in this letter. For this case, examples of changed conditions requiring prior notification include, but are not limited to:

- Abandonment of monitoring wells, MW-17, 32, 33 (located on-site) and MW-49 (located off-site).

Please send written notifications in accordance with the above requirements to the Oshkosh DNR Service Center at 625 East County Road Y, Suite 700, Oshkosh, WI 54901-9731, to the attention of Jennifer Borski or "Remediation and Redevelopment Program, Project Manager for Outagamie County".

The Department appreciates your efforts to restore the environment at this site. If you have any questions regarding this closure decision or anything outlined in this letter, please contact Jennifer Borski at (920) 424-7887.

Sincerely,



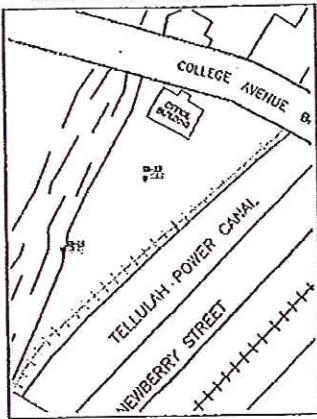
Bruce Urben, Team Supervisor
Northeast Remediation & Redevelopment Program

Attachments:

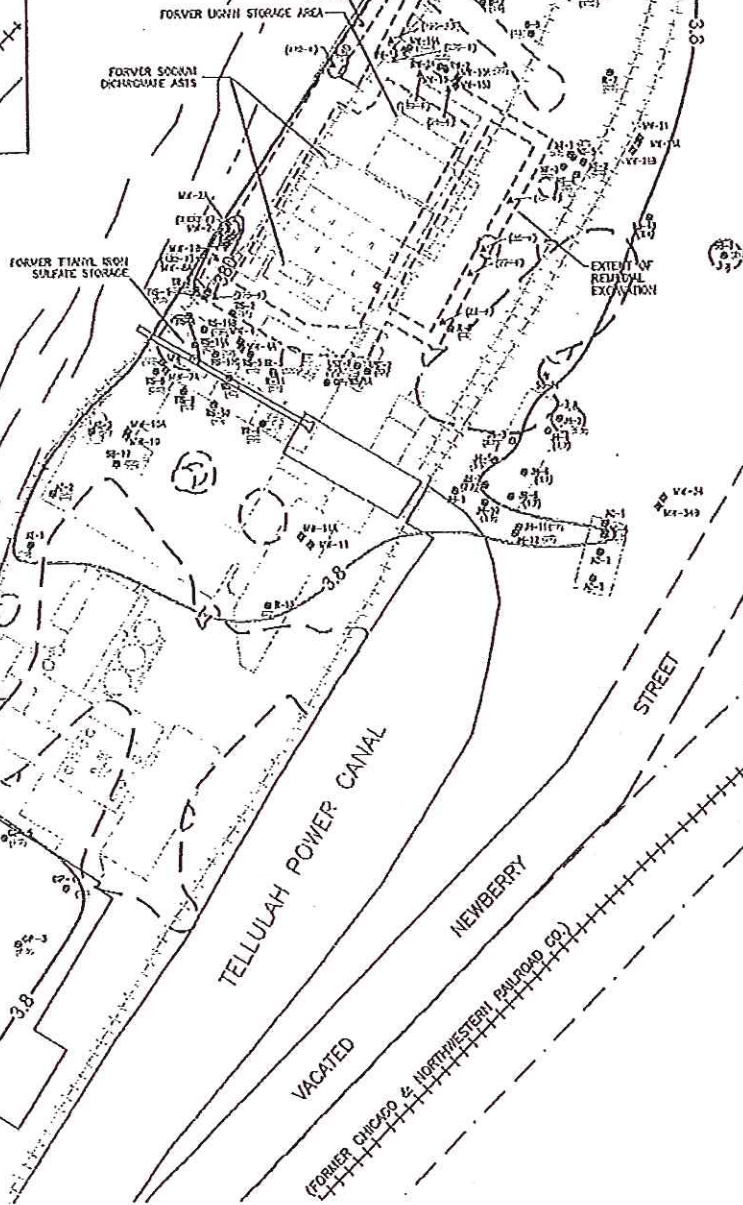
- Figure 33, Post-Excavation Residual Chromium (III) Distribution in Soil 0 to 4 Feet
- Figure 34, Post-Excavation Residual Chromium (III) Distribution in Soil 0 to Bedrock
- Figure 35, Post-Excavation Residual Sulfate Distribution in Soil 0 to 4 Feet
- Figure 36, Post-Excavation Residual Sulfate Distribution in Soil 0 to 12 Feet
- NR 140.28 Exemption for Sulfate in Groundwater, dated September 9, 2008
- Figure 35A, Sulfate Distribution in Water Table Wells

Copy: M. Geall, RiverHeath LLC
J. Feldt, Kaukauna Utilities
K. Harkness, City of Appleton
B. Phelps, DNR – Madison, DG/5
J. Brand, DNR – Green Bay
J. Borski, DNR – Oshkosh

LOCK 4 - FOX RIVER AREA INSET



FOX RIVER



LEGEND

- ◆ MONITORING WELL
- ⊕ RECOVERY WELL
- ⊗ SOIL BORING
- ▲ (112-4) EXCAVATION SIDEWALL SOIL SAMPLE WITH CHROMIUM CONCENTRATION (mg/Kg) AND DEPTH (BGS)
- 3.8 — CHROMIUM ISONCONCENTRATION CONTOUR FOR SITE SPECIFIC RCL-GROUNDWATER PATHWAY EXCEEDANCE
- (12) CHROMIUM CONCENTRATION IN SOIL, mg/Kg
- EXCAVATION BOUNDARY
- - - 2008 SOIL EXCAVATION AREA AND STEP-OUT (ADDITIONAL) EXCAVATION BOUNDARY 0 TO 4 FEET DEEP
- REMEDIAL = SITE SPECIFIC RCL-GROUNDWATER PATHWAY EXCEEDANCE (3.8181ppm) (remediating unsaturated soil piles)

NOTE:

GRAYED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.

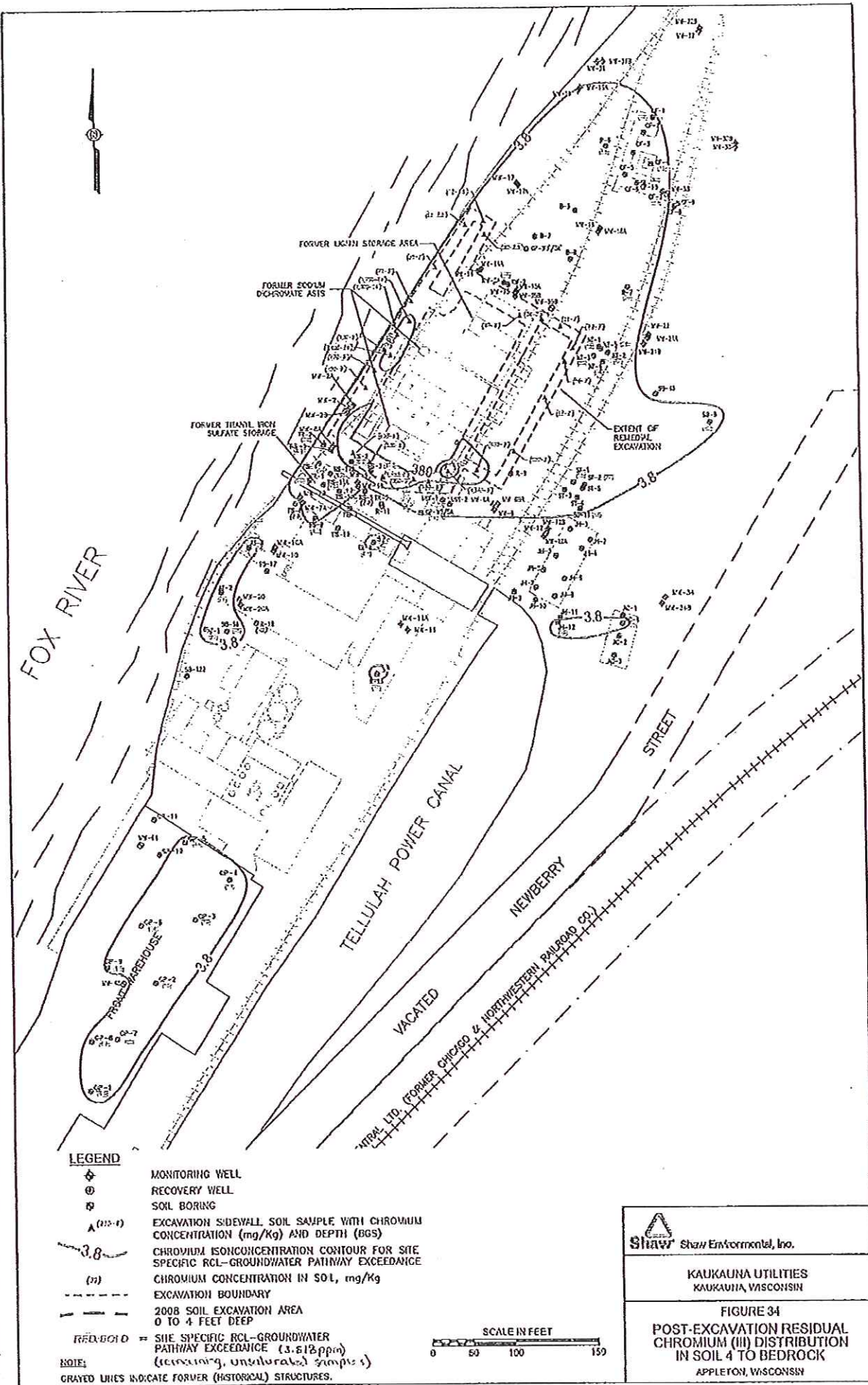
SCALE IN FEET

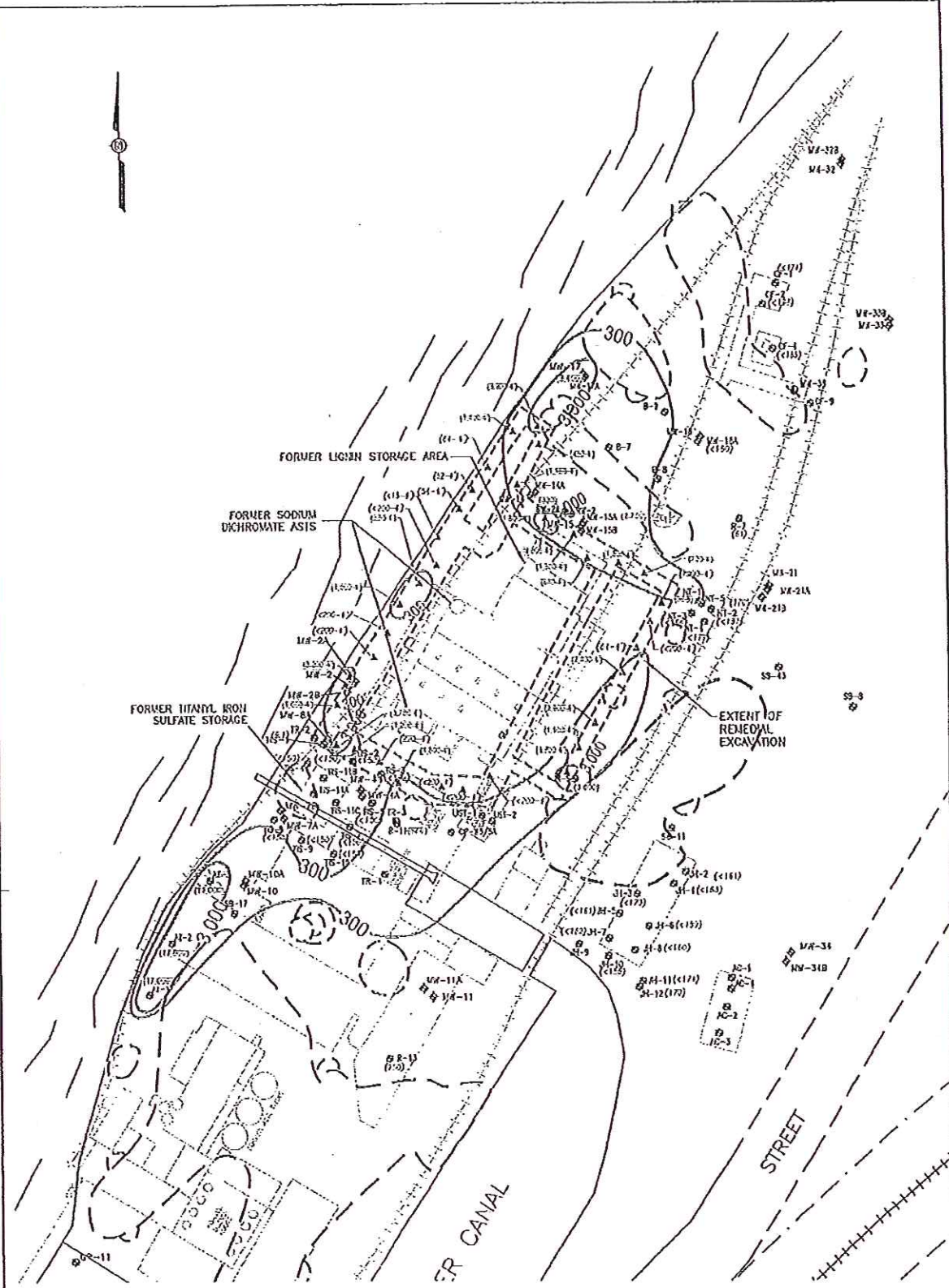


KAUKAUNA UTILITIES
KAUKAUNA, WISCONSIN

FIGURE 33
POST-EXCAVATION RESIDUAL
CHROMIUM (III) DISTRIBUTION
IN SOIL 0 TO 4 FEET
APPLETON, WISCONSIN

FILE: H:\C00\Volume0\VF2\4-09.Locate: P104-CHROMIUM SOIL 477-1271-POST RESIDUAL User: jlschubler Aug 14, 2010 9:09am

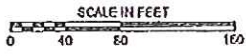




LEGEND

- ◆ MONITORING WELL
- ⊙ SOIL BORING
- ⊖ RECOVERY WELL
- Sulfate Isoconcentration Contour
- 300 (133) Sulfate Concentration in Soil (mg/kg)
- - - - EXCAVATION BOUNDARY
- 2008 SOIL EXCAVATION AREA 0 TO 4 FEET DEEP
- RED/BOLD** = SITE SPECIFIC RCL-GROUNDWATER PATHWAY EXCEEDANCE (200ppm) (remaining, uncorrected samples)

NOTE:
 GRAYED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.

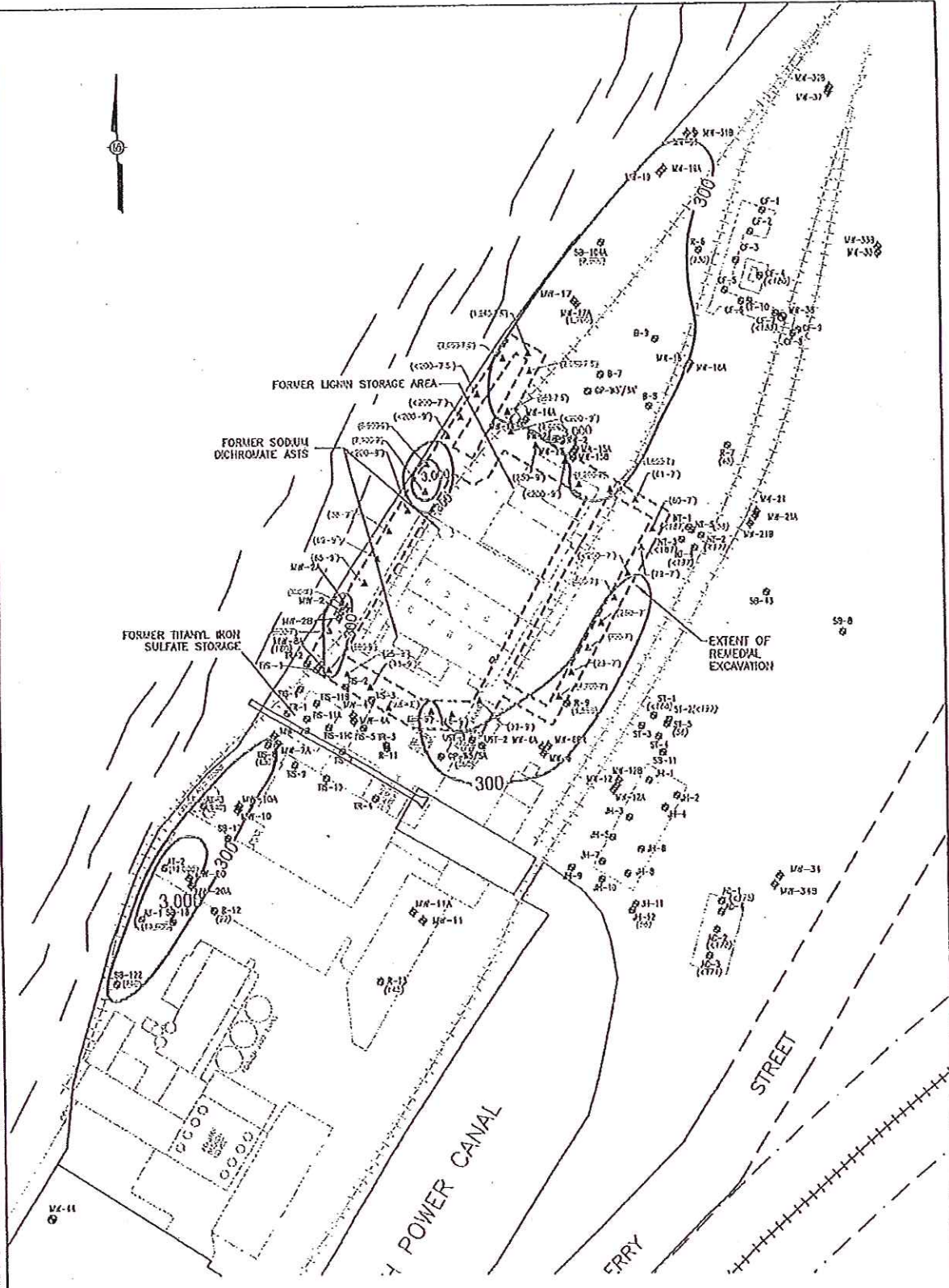


Shaw Shaw Environmental, Inc.







KAUKAUNA UTILITIES
 KAUKAUNA, WISCONSIN

FIGURE 35
POST-EXCAVATION RESIDUAL
SULFATE DISTRIBUTION
IN SOIL 0 TO 4 FEET
 APPLETON, WISCONSIN


File: N:\CSD\Kaukauna\Fig36.dwg Layout: FIG36 SULFATE SOL. 4FT-12" POST EXCAVATION User: JZaloshier Aug 12, 2009 4:23pm



LEGEND

-  MONITORING WELL
-  SOIL BORING
-  SULFATE ISOCONCENTRATION CONTOUR
-  SULFATE CONCENTRATION IN SOIL (mg/Kg)
-  EXCAVATION BOUNDARY
-  **REF: BOLD** = SITE SPECIFIC RCL-GROUNDWATER PATHWAY EXCEEDANCE (200ppm) remaining, unsaturated samples
- NOTE:** GRAYED LINES INDICATE FORMER (HISTORICAL) STRUCTURES.





Shaw Environmental, Inc.

KAUKAUNA UTILITIES
KAUKAUNA, WISCONSIN

FIGURE 36
POST-EXCAVATION RESIDUAL
SULFATE DISTRIBUTION
IN SOIL 4 TO 12 FEET
APPLETON, WISCONSIN



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Oshkosh Service Center
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731
TELEPHONE 920-424-3050
FAX 920-424-4404

September 9, 2008

Mr. David McMurtry
Shaw Environmental Liability Solutions, LLC
4005 Port Chicago Highway
Concord, CA 94520-1122

SUBJECT: NR 140.28 Exemption for Sulfate in Groundwater at
WDNR Site Name: M-I, LLC
1130 Banta Ct (formerly John St), Appleton, WI
WDNR ERP #: 02-45-181585
WDNR VPLE #: 06-45-548615

Dear Mr. McMurtry:

On June 4, 2008, the Department received the *Wisconsin Administrative Code Chapter NR 140.28 Exemption Request* (Exemption Request) from Shaw Environmental, Inc. (Shaw) for sulfate in groundwater at the property at 1130 Banta Court (formerly East John Street) in Appleton, Wisconsin (the Property).

Recent groundwater monitoring data at this site indicates exceedances of the ch. NR 140, Wis. Adm. Code, enforcement standard for sulfate at MW-3AR, MW-4, MW-4A, MW-5, MW-7A, MW-9R, MW-9AR, MW-10, MW-10A, MW-11, MW-11A, MW-12, MW-12A, MW-13AR, MW-17A, MW-18, MW-19, MW-20, MW-21, MW-31, MW-32, MW-37, MW-41, MW-42, MW-50, Extraction Well, GPW-3R, AT-1, and TR-2 and exceedances of the preventive action limit for sulfate at MW-2AR, MW-6, MW-13R, MW-21A, MW-33, MW-36, MW-49 (off-site) and GPW-5. The Department may grant an exemption for a substance of public welfare concern, or nitrate, pursuant to s. NR 140.28(2)(a), Wis. Adm. Code, if actions have been taken to achieve the lowest possible concentration for that substance which is technically and economically feasible and the existing or anticipated increase in the concentration of that substance does not present a threat to public health or welfare.

Based on the information provided, the Department believes that the above criteria have been or will be met because of the interim action excavation in June 2003, the long-term monitoring of sulfate from 1998 to 2008 and the discussion presented in the Exemption Request, including the remedial options analysis (Sec. 7.1.2 and Table S-6). Therefore, pursuant to s. NR 140.28(2)(a), Wis. Adm. Code, an exemption to the enforcement standard is granted for sulfate at the monitoring points listed above. This letter serves as your exemption. With this exemption, you may cease investigation of the sulfate in soil and groundwater and submit a request for closure under ch. NR 726, Wis. Adm. Code for the M-I LLC environmental repair case, WDNR BRRTS #02-45-181585.

September 9, 2008

WDNR Site Name: M-I, LLC
1130 Banta Ct (formerly John St), Appleton, WI
WDNR ERP #: 02-45-181585
WDNR VPLE #: 06-45-548615

2

Please note that significant sulfate contamination remains in soil and groundwater throughout the property. Remaining soil and groundwater contamination will be addressed at the time of closure, including entry on the Remediation and Redevelopment Program's GIS Registry. Based on the known soil and groundwater contamination and behavior of the sulfate plume, additional exemptions under s. NR 140.28(1)(a), Wis. Adm. Code may be required to alter the site.

The Department appreciates your efforts to restore the environment at this site. If you have any questions regarding this exemption, please contact Jennifer Borski in Oshkosh at (920) 424-7887.

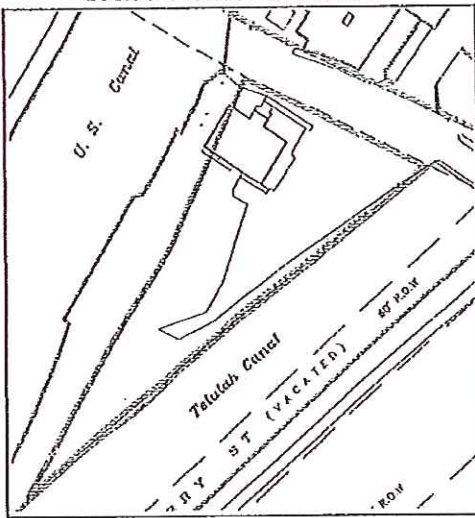
Sincerely,



Bruce Urban
Northeast Remediation & Redevelopment Team Supervisor

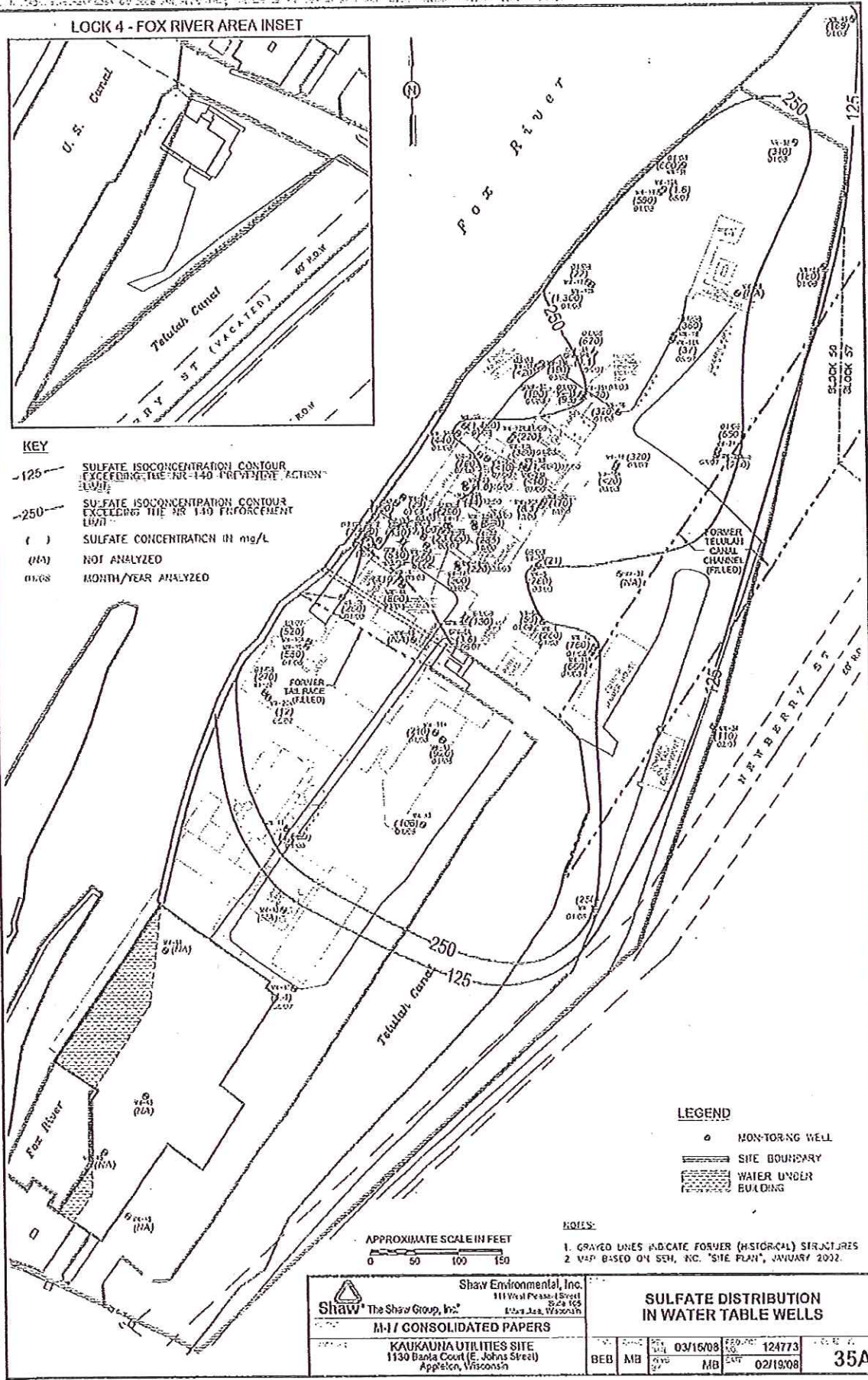
Copy: J. Drought, Shaw
M. Bergeon, Shaw
J. Feldt, Kaukauna Utilities
R. Heinemann, Boardman Law
A. Leuterman, M-I, LLC
J. Borski, DNR, Oshkosh
B. Phelps, DNR, Madison – DG/5

LOCK 4 - FOX RIVER AREA INSET

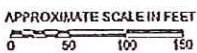


KEY

- 125 Sulfate isoconcentration contour exceeding the MR-140 protective action level
- 250 Sulfate isoconcentration contour exceeding the MR-140 enforcement level
- () Sulfate concentration in mg/L
- (NA) Not Analyzed
- m.e.s Month/Year Analyzed



- LEGEND**
- MONITORING WELL
 - ▭ SITE BOUNDARY
 - ▨ WATER UNDER BUILDING



- NOTES:**
1. GRADED LINES INDICATE FORMER (HISTORICAL) STRUCTURES
 2. MAP BASED ON SEM, INC. "SITE PLAN", JANUARY 2002.

<p>Shaw Environmental, Inc. 111 West Peace Street P.O. Box 165 Eau Claire, Wisconsin</p>		<p>SULFATE DISTRIBUTION IN WATER TABLE WELLS</p>	
<p>M-I CONSOLIDATED PAPERS</p>		<p>DATE: 03/16/08</p>	<p>PROJECT: 124773</p>
<p>KAUKAUNA UTILITIES SITE 1130 Banta Court (E. Johns Street) Appleton, Wisconsin</p>		<p>BY: BEB MB</p>	<p>DATE: 02/13/08</p>
			<p>35A</p>

ATTACHMENT E
Closure Letter
M-I, LLC VPLE

See Attached February 19, 2009 Case Closure Letter



ENVIRONMENTAL & REGULATORY SERVICES DIVISION
BUREAU OF PECFA
375 City Center, Suite 1
Oshkosh, Wisconsin 54901-1805
TTY: Contact Through Relay
Fax: (920) 424-0217
Jim Doyle, Governor
Richard J. Lelienkugel, Secretary

February 19, 2009

Mr. Mark Geall
RiverHeath LLC
619 South Olde Oneida Street, STE D
Appleton, WI 54911

RE: Final Closure
Commerce # 54915-2756-30-A DNR BRRTS # 02-45-272992
M-I LLC, 1130 E. John Street, Appleton

Dear Mr. Geall:

The Wisconsin Department of Commerce (Commerce) has received the item required as a condition for closure of the site referenced above. This site is now listed as "closed" on the Commerce database and will be included on the Department of Natural Resources (DNR) Geographic Information System (GIS) Registry of Closed Remediation Sites to address residual soil contamination. If you intend to construct a potable well on this property, you must get prior DNR approval.

All current and future owners and occupants of the property need to be aware that excavation of contaminated soil may pose a hazard. The property owner at the time of excavation must determine if the excavated soil is contaminated. If contamination is present, the property owner must ensure that disposal is in compliance with applicable State regulations and standards.

It is in your best interest to keep all documentation related to environmental activities at your site.

Thank you for your efforts to bring this case to closure. If you have any questions, please contact me in writing at the letterhead address or by telephone at (920) 424-0046.

Sincerely,

A handwritten signature in black ink that reads "Robert H. Klauk". The signature is written in a cursive style with a long, sweeping underline.

Robert H. Klauk
Senior Hydrogeologist
Site Review Section

cc: Charles J. Zimney - Shaw Environmental, Inc.

ATTACHMENT F
Exemption for Development of a Historic Fill Site
M-I, LLC VPLE

See attached May 12, 2008 Conditional Grant of Exemption



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Matthew J. Frank, Secretary
Ronald W. Kazmierczak, Regional Director

Oshkosh Service Center
625 East County Road Y, STE. 700
Oshkosh, WI 54901-9731
TELEPHONE 920-424-3050
FAX 920-424-4404

May 12, 2008

Mr. Mark Bergeon
Shaw
790 Marvella Lane
Green Bay, WI 54304

FID#: 445031400 & 445011600
Outagamie County

Subject: Conditional Case-by-Case Grant of Exemption for the Development of a Property
Where Solid Waste has been Disposed, 1130 Banta Court, Appleton, WI

Dear Mr. Bergeon:

We have reviewed your request dated March 26, 2008 for a grant of exemption from regulation under s. NR 506.085, Wis. Adm. Code. Based on that evaluation, the Department is issuing this general grant of exemption from the prohibitions contained in s. NR 506.085, Wis. Adm. Code. You must comply with the conditions of this grant of exemption in order to maintain the exemption. This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the department for approval.

Please review the information contained in the publication *Development at Historic Fill Sites and Licensed Landfills: Considerations and Potential Problems PUB-RR-685* to assist you in preventing environmental or safety problems during and after development. We would like to particularly draw your attention to the public safety risk posed by the explosive potential for methane gas that may be present on a property due to the presence of decomposing solid waste.

You are reminded that this approval does not relieve you of obligations to meet all other applicable federal, state and local permits, as well as zoning and regulatory requirements. If you have any questions concerning this letter, please contact Jennifer Borski at (920) 424-7887 or by email to jennifer.borski@wisconsin.gov.

Sincerely,

Bruce Urban
Remediation and Redevelopment Program Supervisor, Northeast Region

c: Jeff Feldt, Kaukauna Utilities, PO Box 1777, Kaukauna, WI 54130
Mark Geall, Tanesay, 1335 N. Dearborn #4, Chicago, IL 60610
Bruce Roskom, City of Appleton, Community Development, 100 N. Appleton St,
Appleton, WI 54911-4799
J. Borski - DNR, Oshkosh
File copy- WMM/3, Madison and WMM, Green Bay

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION
FOR
DEVELOPMENT ON A PROPERTY
WHERE SOLID WASTE HAS BEEN DISPOSED

FINDINGS OF FACT

The Department finds that:

1. Kaukauna Utilities owns the property located at 1130 Banta Court, Appleton, Wisconsin.
2. Solid waste has been disposed of at this property and remains at this property.
3. Mark A. Bergeon of Shaw Environmental, Inc. ("Shaw") has submitted a request dated March 26, 2008 for an exemption from the prohibition in NR 506.085, Wis. Adm. Code. The request has been submitted under the seal of a professional engineer or a professional geologist relating to the proposed development and the environmental conditions at the property.
4. Based upon the information provided to the Department, the proposed development at the property is not expected to cause future exceedances of applicable soil and groundwater standards.
5. Additional documents considered in review of the exemption request include the following:
 - *Additional Information – Development at Historic Fill Site or Licensed Landfill – Exemption Request*, dated April 29, 2008, submitted by Shaw.
 - *Construction Project Consolidated Application* (DNR Form 3500-053) for Project RiverHeath, dated March 24, 2008, submitted by Gary Raasch of Hey and Associates, Inc. on behalf of Mark Geall of Tanesay Development LLC.
 - *Site Investigation / Remedial Action Plan*, dated February 2007, submitted by Shaw.
6. Additional facts relevant to the review of the grant of exemption modification request include the following:
 - Shaw entered the Voluntary Party Liability Exemption ("VPLE") Program in January 2007. The site investigation and remedial action must be approved by the Remediation and Redevelopment ("RR") Program prior to issuance of a certificate of completion under s. 292.15, Wis. Stats.
 - The Department approved groundwater pathway and direct contact site-specific residual contaminant levels ("SSRCLs") for soil on April 4, 2008. Shaw has delineated SSRCL exceedances at the property.
 - The 16-acre property is predominantly vacant since building demolition in 2001 and covered with an impermeable surface (e.g. vegetation and gravel). As a result, groundwater has been monitored under primarily impermeable conditions from 2001 to 2008.

7. If the conditions set forth below are complied with, the development of the property will not result in environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.

CONCLUSIONS OF LAW

1. The Department has the authority under s. NR 500.08(4), Wis. Adm. Code to issue an exemption from the prohibition in s. NR 506.085, Wis. Adm. Code, if the proposed development will not cause environmental pollution as defined in ss. 289.01(8) and 299.01(4), Wis. Stats.
2. The Department has authority to approve a grant of exemption with conditions if the conditions are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, or to assure that environmental pollution will not occur.
3. The conditions set forth below are necessary to ensure compliance with the applicable provisions of chapters NR 500 to 538, Wis. Adm. Code, and to assure that environmental pollution will not occur.
4. In accordance with the foregoing, the Department has the authority under s. NR 500.08(4), Wis. Adm. Code, to issue the following conditional grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby issues an exemption to from the prohibition in s. NR 506.085, Wis. Adm. Code for development on a property which contains solid waste as proposed in the submittal dated April 29, 2008, subject to the following conditions:

1. No action related to the development of the property may be taken which will cause a significant adverse impact on wetlands as provided in ch. NR 103, Wis. Adm. Code.
2. No action related to the development of the property may be taken which will cause a significant adverse impact on critical habitat areas, as defined in s. NR 500.03(55), Wis. Adm. Code.
3. No action related to the development of the property may be taken which will cause a detrimental effect on any surface water, as defined in s. NR 500.03(62), Wis. Adm. Code.
4. No action related to the development of the property may be taken which will cause a detrimental effect on groundwater, as defined in s. NR 500.03(62), Wis. Adm. Code, or will cause or exacerbate an attainment or exceedance of any preventive action limit or enforcement standard at a point of standards application as defined in ch. NR 140, Wis. Adm. Code.

5. No action related to the development of the property may be taken which will cause a migration and concentration of explosive gases in any structures in excess of 25% of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the soils outside of the limits of solid waste disposal within 200 feet of the property boundary or beyond the property boundary in excess of the lower explosive limit for such gases at any time. No actions may be taken which will cause a migration and concentration of explosive gases in the air outside of the limits of solid waste disposal within 200 feet of the landfill boundary or beyond the landfill property boundary in excess of the lower explosive limit for such gases at any time.
6. No action related to the development of the property may be taken which will cause an emission of any hazardous air contaminant exceeding the limitations for those substances contained in s. NR 445.03, Wis Adm. Code.
7. No action related to the development of the property may be taken which will cause an exceedance of a soil clean up standard in ch. NR 720, Wis. Adm. Code.
8. This exemption shall transfer with changes in property ownership. In accordance with s.289.46(2), Stats., any person having or acquiring rights of ownership in land where a solid or hazardous waste disposal facility was previously operated may not undertake any activities on the land which interfere with the closed facility causing a significant threat to public health, safety or welfare. The Department of Natural Resources should be contacted to discuss any proposed changes to avoid activities that could violate the statute.
9. This grant of exemption is limited to the proposed changes described in your application. If you are considering additional changes beyond those described in the application, a new application must be submitted to the department for approval.
10. A soil management plan must be prepared, reviewed and approved by the RR Program prior to excavation. The soil management plan must address the potential for reuse of excavated solid waste (black silty sand, brick rubble in soil and wood debris in soil) on the property. A one-time disposal exemption by the Waste and Materials Management ("WMM") Program may be necessary.
11. Placement of excavated solid waste in the Telulah Canal must be approved by the WMM Program by receipt of a low hazardous waste exemption, the Division of Water by receipt of a Chapter 30 permit and approved by the United States Army Corps of Engineers.
12. Institutional controls required for the property by the RR and WMM Programs must be implemented.

The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time, if in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this grant of exemption do not supersede or replace any previous conditions of approval for this property.

Conditional Case-by-Case Grant of Exemption
M-I LLC VP LE
WDNR BRRTS #: 06-45-548615

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to section 227.52 and 227.53, Stats, you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: 5-13-08

DEPARTMENT OF NATURAL RESOURCES
For the Secretary



Bruce G. Urban
Northeast Region



Jennifer Borski, Hydrogeologist
Northeast Region