

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW**

ANN ARBOR CHARTER TOWNSHIP,  
a Michigan municipal corporation,

Plaintiff,

v.

WSG PROPERTIES, LLC, a Michigan limited liability company, AMC-WSG, LLC, a Michigan limited liability company, AMC-MID MICHIGAN MATERIALS LLC, a Michigan limited liability company,

Defendants.

Case No. \_\_\_\_\_ - CE

Hon. \_\_\_\_\_

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BODMAN PLC

By: Nathan D. Dupes (P75454)  
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**VERIFIED COMPLAINT**

**There is no other civil action between these parties arising out of the same transactions as alleged in this complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge.**

## **VERIFIED COMPLAINT**

Plaintiff Ann Arbor Charter Township (the “Township”), through its undersigned counsel, states as follows for its Verified Complaint:

### **SUMMARY OF CASE**

1. The Township brings this action for injunctive relief against Defendants, whose sand and gravel mining operations are in violation of Township authorizations and ordinances and have caused and will continue to cause severe adverse impacts on the surrounding environment and neighboring properties.

2. By pumping and discharging approximately 2 million gallons of water per day off-site, Defendants have drastically lowered the water table, resulting in the dewatering of more than 10 nearby residential wells, among other adverse impacts.

3. The Township seeks temporary, preliminary, and permanent injunctive relief enjoining Defendants from continuing to operate unless they comply with their Conditional Use Permit, Development Agreement, and Township ordinances.

### **PARTIES**

4. WSG Properties, LLC is a Michigan limited liability company with its principal place of business in Washtenaw County, Michigan.

5. AMC-WSG, LLC is a Michigan limited liability company with its principal place of business in Washtenaw County, Michigan.

6. AMC-Mid Michigan Materials, LLC is a Michigan limited liability company with its principal place of business in St. Clair County, Michigan.

7. Ann Arbor Charter Township is a Michigan municipal corporation located in Washtenaw County and subject to the laws of the State of Michigan, and is charged with the keeping the public health, safety and welfare of its residents a paramount concern.

## **JURISDICTION AND VENUE**

8. The Court has jurisdiction over this action because the Township's claims arise under the Constitution and laws of the State of Michigan, the amount in controversy exceeds \$25,000, and because the Township seeks equitable relief.

9. Venue is proper in this Court under MCL 600.1621(a) and 600.1627 because the Township is a municipal corporation situated in Washtenaw County, and Washtenaw County is the county in which all or part of the Township's causes of action arose. Venue is further proper in this Court because the Development Agreement that is the subject of this lawsuit provides that this Court "shall be the exclusive forum and venue of any dispute arising from this Agreement."

## **GENERAL ALLEGATIONS**

### **The Vella Pit**

10. Defendant WSG Properties, LLC ("WSG Properties") is the current owner of approximately 142 acres of real property located at 4984 Earhart Road, Ann Arbor, Parcel ID I-09-01-200-002 (the "Vella Pit").

11. Defendant AMC-WSG, LLC ("AMC-WSG") is the developer of the Vella Pit and is party to the Development Agreement governing the mining operations at the Vella Pit.

12. Defendant AMC-Mid Michigan Materials, LLC ("MMM") is a sand and gravel supply company that currently operates four gravel mines in Michigan, including the Vella Pit.

13. The Vella Pit has historically been operated as a gravel mine.

14. From approximately 1960 through 2020, it was owned by the Vella family.

15. Upon information and belief, the Vella family's operations did not involve any significant groundwater dewatering or lowering of the water table. The Township did not receive complaints concerning the Vella family's operations.

16. In 2020, WSG Properties purchased the Vella Pit.

### Conditional Use Permit

17. On February 11, 2020, AMC-WSG applied to the Township for a Conditional Use Permit (“CUP Application”). **Ex. 1, CUP Application.** The Township and its consultants spent many hours considering the CUP Application and supporting materials.

18. Many of the representations Defendants made to the Township throughout the permitting process were false because they represented that Defendants’ operations would not materially differ from the historical Vella Pit operations and would involve a closed-loop system of water use such that there would be no material change in the water table or adverse impact to neighboring properties and resources.

19. Defendants stated the following in their original CUP Application:

- i. “There are no material changes proposed to the mining property, mining boundaries or mining operations.” **Ex. 1**, p. 1. “The proposed use will be essentially the same as the past decades of use and will not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.” *Id.*, p. 3.
- ii. “[T]he proposed use will preserve and not negatively impact property values, will have no changes in the conservation of natural resources.” *Id.*, p. 2.
- iii. “Evidence of approval from other agencies is not anticipated and was not requested.” *Id.*, p. 15.
- iv. “On-going operations do not pose a risk to surface watercourses or water bodies within or outside of the property lines.” *Id.*, p. 19.

- v. “The mine operation does not include groundwater pumping to facilitate dewatering. The operation pumps water from existing mine pits to use in the washing operation, but that water is returned to the pond in a closed loop system with no resulting net loss of groundwater from the property.” *Id.*, p. 21.

20. Defendants stated the following in a supplemental submission in support of the CUP Application, dated March 17, 2020:

- i. “The water will ultimately flow toward the freshwater pond to be used again in what is essentially a closed loop system.” **Ex. 2, Supplement to CUP Application**, p. 3.
- ii. “The wash water is used in a closed loop system and after washing the water is pumped to the wash water pond shown on Figure 2A where the clay, silt and fine sand settles out. AMC-WSG, LLC may pump water from the pond at a higher rate than present, but water will not be consumed and will be returned to the ponds.” *Id.*, p. 5.

21. Consistent with Defendants’ representations that their operations would be a closed-loop system, the Site Plan which Defendants submitted as part of the CUP Application did not depict any outfall through which water would be discharged off-site.

22. Nor did Defendants’ application materials disclose that Defendants would apply for a permit from the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”) to discharge groundwater off-site.

23. The Planning Commission held a public hearing on the CUP Application on May 4, 2020.

24. At the public hearing, Rob Wilson, Vice President of MMM, assured the Township that Defendants would “mine the property responsibly just as had been done by the Vella family for the last 60 years.” **Ex. 3, Meeting Minutes from May 4, 2020 Planning Commission Meeting.**

25. In response to citizen concerns about potential impact on residential properties, Mr. Wilson represented that “water would be used in the same way as the existing operation, and would be contained on site. There should be zero impact to water quality and/or water level.” **Ex. 4, p. 7.**

26. Based on Defendants’ representations, the Planning Commission ultimately voted to recommend approval of the site plan and CUP Application to the Township Board of Trustees. **Ex. 4, Planning Commission Resolution.**

27. The Board of Trustees subsequently approved the CUP Application and authorized a CUP on July 20, 2020. **Ex. 5, Board Resolution.**

28. The CUP included a list of twenty conditions requiring Defendants to, among other things, (i) not revise or modify the Site Plan without prior written notice to and approval by the Township; (ii) comply with all comments, conditions, and recommendations set forth in the resolution and consultant comments/reports; (iii) comply with all applicable laws and ordinances; (iv) establish and submit a plan to the Township ensuring any planned lakes will not impact the water levels of surrounding wells and wetlands, and (v) comply with all state and federal requirements for mineral mining. **See Ex. 5.**

29. AMC-WSG and the Township also entered into a Development Agreement, which requires, among other things, that the project proceed “in a manner consistent with the Final Site Plan, the Resolutions, and other resolutions and permits issued by the Township.” See Ex. 6, **Development Agreement.**

**Defendants’ Violations and the Township’s Initial Investigation**

30. After receiving the CUP and without notifying the Township, Defendants applied for a permit from EGLE authorizing the discharge of processed wastewater from one of the mine’s settling ponds through an outfall that discharged to an unnamed tributary to Fleming Creek and wetlands north of the mining operations, as shown below in an image that Defendants created and provided to the Township at an August 21, 2023 Board meeting.

**Vella Pit - Operations**



- ① Active mining area
  - ② Reservoir of water for wash plant
  - ③ Settling pond
  - ④ NPDES outfall to wetlands
  - ⑤ Settling pond for wash plant return water
- Water flow direction



31. Defendants' request for authorization from EGLE was contrary to the representations made during the CUP permitting process, namely that other agency approvals for the project were not anticipated and that water would be maintained on-site in a closed-loop system.

32. Defendants request for authorization from EGLE also was contrary to the approved Site Plan, which did not depict an outfall through which groundwater would be discharged off-site.

33. Defendants began discharging water off-site in approximately April of 2022.

34. Since that time, Defendants have been pumping and discharging at least 2 million gallons of groundwater per day.

35. The Board first learned of the potential impacts of Defendants' dewatering operations at a May 15, 2023 Board meeting, when a resident whose property was near the Vella Pit informed the Board that her well had gone dry, leading to concerns that the water table had dropped.

36. The resident's concerns were alarming to the Township because the Vella Pit is close to several residences, as well Spiritus Sanctus Academy, a Catholic school for children from Pre-K through 8<sup>th</sup> Grade, and the Dominican Sisters of Mary Mother of the Eucharist, home to approximately 100 Dominican Sisters. These properties depend on on-site, potable wells for their drinking water supply.

37. Aerial photographs of the Vella Pit taken in May also showed that a lake greater than 5 acres in size had been created on the site, without a permit or notice to the Township, in violation of Condition 19 of the CUP.



38. Around the same time as the May 15 Board meeting, the Township learned that Defendants had applied for a water withdrawal permit from EGLE, which would allow withdrawal of up to 4.8 million gallons of water per day from the site.

39. Upon receiving this information, the Township immediately began to investigate. The Township met with representatives from Defendants and, on July 10, 2023, sent a detailed letter to Defendants requesting information about the mining operations and well impacts, including Defendants' hydrogeological analysis showing how current or proposed water withdrawals may impact the watershed, the aquifers, and nearby wells. The Township also asked Defendants to describe any alternatives analysis conducted for the current mining operations. **Ex. 7, Township Letter to Defendants.**

40. On August 8, 2023, Defendants responded to the Township's letter. Defendants conceded the following:

- i. Their original modeling for the mining operations was flawed;
- ii. Their original equipment for monitoring discharge was faulty;
- iii. They did not have historic water withdrawal data;
- iv. They had not completed their hydrogeological evaluation of the site or prepared an alternatives analysis to the withdrawal operations; and
- v. Further well impacts could occur. **Ex. 8, Defendants' Response Letter.**

41. After receiving Defendants' response, the Township provided Defendants the opportunity to make a presentation at the August 21, 2023 Board Meeting.

42. At that meeting, the Township first heard approximately three hours of public comment concerning the Vella Pit operations. Residents expressed concerns over, among other things, the dewatered wells, Defendants' discharge to the wetlands, and soil erosion issues impacting the unnamed tributary to Fleming Creek and Massey Lake.

43. The Township then heard a presentation by one of Defendants' owners, Rob Wilson, Defendants' attorney, and Defendants' current hydrogeological consultants, Haley & Aldrich.

44. The hydrogeological analysis Defendants presented was woefully inadequate. It lacked detail, did not offer any definitive conclusions, and Defendants admitted that it was incomplete. **Ex. 9, Partial Transcript of August 21, 2023 Board Meeting**, p. 52.

45. Defendants further stated that they were planning to install additional on-site and off-site monitoring wells to assist with the hydrogeological study but, to date, have not committed to a deadline by which those wells and the study will be completed. *Id.*, p. 15.

46. Defendants also admitted that one of the results of the hydrogeology study could be that additional wells may need to be installed in a deeper aquifer, where arsenic is a concern. *Id.*, p. 31.

47. Defendants also admitted at the meeting that the CUP Application materials did not disclose the fact that Defendants planned to discharge groundwater off-site via an outfall pipe. *Id.*, p. 48.

48. Defendants' consultant also admitted at the meeting that they had not been asked by their client to investigate the impacts of the Vella Pit operations in future phases as the active mined face moves to the west. *Id.*, p. 38.

49. In response to a Township trustee's question whether dredging could be used in lieu of dewatering, Defendants stated that dredging seemed impractical, while conceding that they had not formally considered the option. *Id.* pp. 76-77.

**Additional Impacts from Defendants' Operations and Violations**

50. The Township has continued to receive reports of additional wells going dry in the vicinity of the Vella Pit.

51. Township residents rely on these wells to drink, bathe, wash dishes, water their gardens, and for all other activities in their daily lives that require a potable water supply. Municipal water is not available in this area.

52. To date, at least the wells at the following properties have been adversely impacted by Defendants' operations:

- i. 4014 Earhart;
- ii. 4210 Earhart;
- iii. 4460 Earhart;
- iv. 4125 Earhart;
- v. 4040 Warren;
- vi. 4165 Warren;
- vii. 4275 Grandeur Oaks;
- viii. 4429 Grandeur Oaks;
- ix. 2749 Trailwood;
- x. 2797 Trailwood; and
- xi. 4715 Ridge Creek Lane.

53. Defendants have advised the Township that they have paid for or reimbursed the resident for the costs to lower the well pump or, where that is not feasible, completely replace the well at the first nine of the addresses listed in the preceding paragraph. **Exhibit 10, Email Correspondence from Defendants' Attorney.**

54. Defendants installed one of the replacement wells in a deeper aquifer which is known to contain higher concentrations of arsenic.

55. Wells with higher concentrations of arsenic may require the installation of a reverse osmosis treatment system to treat the water to acceptable levels.

56. Residents have raised concerns about reverse osmosis treatment systems, including recurring maintenance costs and the removal of beneficial minerals from the water. **Ex. 11, August 21, 2023 Board Meeting Minutes.**

57. The Township also has heard reports of excessive noise, vibrations, and dust caused by Defendants' trucks, as well as complaints that Defendants' operations frequently commence prior to the allowed 7:00 a.m. start time.

58. The Township is not the only governmental authority with serious concerns over Defendants' operations.

59. On September 13, 2023, which was the statutory deadline for EGLE to decide whether to grant or deny Defendants' large quantity water withdrawal permit application, Defendants abruptly retracted their application.

60. Defendants retracted the permit application because EGLE was going to deny it.

61. On September 14, 2023, EGLE issued Defendants a Violation Notice stating that Defendants' operations violated the following provisions of the Michigan Natural Resources and Environmental Protection Act: Part 31, Water Resources Protection; Part 91, Soil Erosion and

Sedimentation Control; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 327, Great Lakes Preservation. **Ex. 12, EGLE Violation Notice.**

62. The EGLE Violation Notice stated that Defendants' operations had caused sediment to enter the unnamed tributary stream, Fleming Creek, Massey Lake, and adjacent wetlands, and the sediment had accumulated in those water features. *Id.* at 2.

63. EGLE also noted the extensive erosion caused by Defendants' operations due to inadequate soil erosion and sedimentation control measures. *Id.* at 4.

64. On September 27, 2023, the Township provided notice to Defendants under Section 13 of the Development Agreement of Defendants' numerous violations and breaches.

65. The Township further notified Defendants that said violations and breaches caused an emergency situation for which no cure period would be provided.

66. Section 74-97 of the Zoning Ordinance provides that the imposition of other penalties prescribed in the Zoning Ordinance shall not preclude the instituting of appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a structure or premises, or to stop an illegal act, conduct, business, or use of a structure or premises.

67. Defendants' mining operation at the Vella Pit has resulted in detrimental and unacceptable impacts to the water table, residential water supply, and natural environment.

68. Defendants also have wholly failed to assure the Township that these impacts will not continue and become worse over time.

69. The detrimental and unacceptable impacts caused by the Defendants' operations constitute an emergency necessitating immediate abatement.

**COUNT I - NUISANCE PER SE - UNLAWFUL EXPANDED CONDITIONAL  
USE**

70. The Township hereby incorporates all preceding paragraphs of its Verified Complaint.

71. Section 504 of the Michigan Zoning Enabling Act (“MZEA”), MCL 125.3504 (“Section 504”), permits a Township to adopt zoning provisions providing for special land uses subject to conditions.

72. The Township lawfully adopted such special land use provisions in the Zoning Ordinance, which are codified in the Township’s Code of Ordinances at Chapter 74, Article II, Division 3 – Conditional Use Permits.

73. Section 504 of the MZEA provides that reasonable conditions may be required with the approval of a special land use; that the conditions may include, among others, conditions necessary to protect the natural environment and conserve natural resources and energy, to ensure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner; and that such conditions imposed shall be recorded in the record of the approval action and “shall remain unchanged except upon the mutual consent of the approving authority and the landowner.”

74. The Township’s approval of the CUP is recorded by Board Resolution and Development Agreement. The CUP Application, the Site Plans, the Planning Commission Resolution recommending approval of the CUP, the Development Agreement, and the Reports as defined therein, together constitute the basis upon which the Township approved the CUP and are incorporated in the CUP.

75. Section 74-136 of the Township Zoning Ordinance provides that an approved conditional use permit, including all attached conditions, shall remain unchanged except upon mutual consent of the Township Board and the landowner.

76. Condition 3 of the CUP provides: “Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the Township.”

77. The Site Plan describes a “closed loop” system of water use and management at Vella Pit.

78. The outlet pipe discharging water off-site into the Fleming Creek/wetlands area is not shown on any site plan or application submitted to the Township.

79. Defendants’ intent to seek a permit from EGLE authorizing discharge of water off-site into neighboring wetlands is not shown on the CUP Application, the Site Plan or in any application, report or comment related to the CUP.

80. Defendants did not request, and the Township did not approve, any change in conditions to the CUP to allow discharge of water off-site.

81. Defendants expanded the conditional use granted by the CUP by changing operations to implement a system that involves pumping and discharging groundwater off-site to the neighboring wetland.

82. Defendants did not request or apply for a new conditional use permit to change or expand mining operations on the property prior to implementing the change in operations.

83. Section 74-6 of the Township Zoning Ordinance provides in relevant part that the expansion or change to an existing conditional use shall require a new conditional use permit.

84. Section 74-99 of the Zoning Ordinance provides that any use of any structure or lot in violation of any of the provisions of the Zoning Ordinance is declared to be a public nuisance per se and may be abated by order of any court of competent jurisdiction.

85. Defendant's expansion or change to the use on the property away from a closed loop system to a discharge of water off site is a violation of Sections 74-6 and 74-99 of the Zoning Ordinance.

86. Defendants' violations of the Zoning Ordinance are a nuisance per se.

87. Defendants are owners or agents in charge of the Vella Pit and are therefore liable for maintaining the nuisance per se under Section 407 of the MZEA.

88. Section 407 of the MZEA provides that a court must order a nuisance per se abated.

89. Section 2940 of the Revised Judicature Act permits the court to grant an injunction to stay and prevent the nuisance.

90. Defendants' violations have detrimentally impacted the water table by significantly lowering it, causing residential wells to go dry, thereby depriving residents of their existing reliable potable water supply.

91. Defendants' violations have detrimentally impacted the neighboring wetlands, unnamed tributary, Fleming Creek and Massey Lake.

92. Defendants' violations have created an emergency situation requiring immediate abatement of the nuisance per se by the Court.



**COUNT II - NUISANCE PER SE - VIOLATION OF CONDITIONAL USE  
PERMIT**

93. The Township hereby incorporates all preceding paragraphs of its Verified Complaint.

94. Section 74-137 of the Zoning Ordinance provides that, in granting a conditional use permit, the Township Board shall impose conditions it deems necessary to achieve the objectives and standards of the Zoning Ordinance, the MZEA, and the public health, safety, and welfare of the Township.

95. Section 74-137 of the Zoning Ordinance provides that failure to comply with any conditions of a conditional use permit shall be considered a violation of the Zoning Ordinance.

96. Condition 3 of the CUP provides: “Applicant shall not revise or modify the Site Plan without prior written notice to and approval by the Township.”

97. Condition 11 of the CUP provides that Defendants must comply with all submissions, recommendations and reports applicable to the granting of the CUP.

98. Defendants violated Conditions 3 and 11 of the CUP by implementing a system that discharges water offsite, by installing an outlet pipe discharging water into the Fleming Creek/wetlands area and by requesting a permit from EGLE authorizing discharge of water off the Vella Pit into neighboring wetlands.

99. Condition 14 of the CUP requires Defendants to comply with “other applicable laws and ordinances, including the Township noise, light and nuisance ordinances, and ordinances relating to hours of operation.” **Ex. 5**, p. 4.

100. Applicable Township ordinances provide the following:

- (i) Section 74-136(2) requires a conditional use to be compatible with the natural environment and existing and future land uses in the vicinity.
- (ii) Section 74-136(5) requires that a conditional use not be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.
- (iii) Section 74-592(c)(7) prohibits mining operations from altering the drainage pattern of surface or subsurface waters on adjacent property.
- (iv) Section 74-592(c)(10)(f) requires the site plan to include “location and nature of structures and stationary equipment to be located on site during mining operations.”
- (v) Section 74-592(c)(10)(m) requires that the site plan must have a certified statement by an engineer concerning the expected impact on the water table and water supply wells in the vicinity of the site.
- (vi) Section 74-175 requires that a preliminary site plan must identify any on-site or adjacent natural features, including wetlands, it must provide a Natural Resources Impact Statement and must also provide a site analysis describing the site’s relationship to natural features.
- (vii) Section 74-594 generally prohibits any use that creates any “dangerous, injurious, noxious, or otherwise objectionable element or condition so as to adversely affect the surrounding area or adjoining premises.”

101. As set forth more fully above, Defendants’ actions violate these ordinances.

102. Defendants also have violated Condition 14 of the CUP by violating state environmental law, as described in EGLE’s Violation Notice. **Ex. 12, EGLE Violation Notice.**

103. Defendants violated Condition 19 of the CUP by creating a five (5) acre lake on the Vella Pit without a plan approved by the Township. **Ex. 5, p. 4.**

104. Section 74-99 of the Zoning Ordinance provides that any use of any structure or lot in violation of any of the provisions of the Zoning Ordinance is declared to be a public nuisance per se and may be abated by order of any court of competent jurisdiction.

105. Defendants' violations of the Zoning Ordinance are each a nuisance per se.

106. Defendants are owners or agents in charge of the Vella Pit and are therefore liable for maintaining the nuisance under Section 407 of the MZEA.

107. Section 407 of the MZEA provides that a court must order a nuisance per se abated.

108. Section 2940 of the Revised Judicature Act permits the court to grant an injunction to stay and prevent the nuisance.

109. Defendants' violations have detrimentally impacted the water table by significantly lowering it, causing residential wells to go dry, thereby depriving residents of their existing reliable potable water supply.

110. Defendants' violations have detrimentally impacted the neighboring wetlands, unnamed tributary, Fleming Creek and Massey Lake.

111. Defendants' violations have created an emergency situation requiring immediate abatement of the nuisance per se by the court.

### **COUNT III – BREACH OF DEVELOPMENT AGREEMENT**

112. The Township hereby incorporates the preceding paragraphs of its Verified Complaint.

113. Condition 7 of the CUP required the execution of the Development Agreement.

114. AMC-WSG, WSG Properties and the Township entered into the Development Agreement, effective October 12, 2020.

115. The Development Agreement is a valid, binding, enforceable contract between the parties.

116. Section 1 of the Development Agreement requires compliance with all of the standards, findings, and conditions of approval of the Site Plan and CUP, the Resolutions of the Planning Commission and Township Board, the Township Code and other applicable laws and ordinance in the use and development of, and mining activities on the Vella Pit.

117. Section 9 of the Development Agreement requires that the Vella Pit be constructed, used, and maintained in a manner consistent with the Final Site Plan, the Resolutions, and other resolutions and permits issued by the Township.

118. Section 11 of the Development Agreement requires the Vella Pit to be developed and used for the mining activities shown on the Final Site Plan and in accordance with the applicable zoning regulations.

119. Section 12 of the Development Agreement requires compliance with the terms of the Development Agreement, the Resolutions as defined therein, the CUP, the Final Site Plan and other applicable permits and agreements, including the stormwater maintenance agreement and other requirements of the Final Site Plan and Resolutions.

120. As set forth more fully above, Defendants have breached the Development Agreement by failing to comply with the CUP, the Final Site Plan, and applicable law.

121. The Township has performed its obligations under the Development Agreement.

122. Defendants' breaches have caused nuisance per se zoning violations.

123. Defendants' breaches have proximately caused harm to the Township.

124. Section 14 of the Development Agreement requires Defendants to "defend, indemnify and hold the Township harmless from and against any and all claims, demands, actions, damages, injuries, costs or expenses of any kind of nature ("Claims") arising out of breach of this

Agreement by [Defendants], including reasonable costs, expenses and attorneys' fees incurred by the Township in connection with such Claims or the enforcement of this Agreement.”

125. The Development Agreement acknowledges that the Township has all rights and remedies available at law or in equity to enforce the Agreement.

126. Section 2940 of the Revised Judicature Act permits the court to grant an injunction to stay and prevent the nuisance the Defendants' breaches have caused.

127. Defendants' breaches have created an emergency situation requiring immediate abatement of the nuisance per se by the court.

#### **COUNT IV – MICHIGAN ENVIRONMENTAL PROTECTION ACT**

128. The Township hereby incorporates the preceding paragraphs of its Verified Complaint.

129. The Michigan Environmental Protection Act, MCL 324.1701 et seq. (“MEPA”) authorizes “any person” to bring an action in court “for the protection of the air, water and other natural resources and the public trust in these resources from pollution, impairment or destruction.” MCL 324.1701(1). MEPA also provides that a court “may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect” natural resources.” *Id.*, 324.1704(1).

130. Defendants' operations at the Vella Pit have impaired and destroyed the groundwater and surface waters and have violated the public trust in those resources in several respects, including, but not limited to, adversely impacting groundwater resources and depriving residents of their potable water supply, filling wetlands, and diminishing a lake and streams.

131. Defendants also violated MEPA by failing to consider and, in other instances, misrepresenting the environmental impacts of their mining operations.

132. Defendants have conceded that they have failed to adequately consider alternatives to their mining operations, in light of the State's paramount concern for the protection of its natural resources from pollution, impairment, or destruction.

#### **COUNT V – DECLARATORY AND INJUNCTIVE RELIEF**

133. The Township hereby incorporates the preceding paragraphs of its Verified Complaint.

134. As more fully described above, Defendants secured the CUP by misrepresenting the scope and impact of their proposed mining operations.

135. As more fully described above, Defendants, without seeking modification of the conditions of the CUP or any other approval from the Township, implemented a system of water management that pumps and discharges more than 2 million gallons per day of groundwater off-site into the neighboring wetlands causing a detrimental impact on the water table, residential potable water supply, the unnamed tributary, Fleming Creek, and Massey Lake.

136. As more fully described above, Defendants' actions are in violation of the Zoning Ordinance, the CUP, the Development Agreement, and MEPA, resulting in a nuisance per se that is subject to mandatory abatement by this Court.

137. Accordingly, there is an actual, justiciable controversy between the parties and a declaratory judgment under MCR 2.605 is appropriate.

138. Defendants' conduct has caused immediate and irreparable harm to the public health, safety and welfare of the Township for which there is no adequate remedy at law.

139. The Township will suffer far more harm if an injunction is not granted than Defendants will suffer if an injunction is granted.

140. The Township is highly likely to prevail on the merits of this matter.

141. The public interest favors issuing an injunction that requires Defendants to comply with the Zoning Ordinance, the CUP, the Development Agreement, and MEPA.

142. In light of the foregoing, it is necessary for the Township to obtain a declaratory ruling from this Court that Defendants' operations are in violation of the Zoning Ordinance, the CUP, the Development Agreement, and MEPA, and that, in light of these violations and the Vella Pit's devastating impact on the environment and surrounding properties, the Vella Pit's operations must cease unless and until all violations are cured.

143. The Township is entitled to temporary, preliminary, and permanent injunctive relief pursuant to Sections 407 of the MZEA and 2940 of the Revised Judicature Act, MEPA, and under the Development Agreement.

WHEREFORE, the Township respectfully requests that this Court grant the Township the following relief:

- A. A declaration that Defendants have violated the CUP, Township Zoning Ordinances, the Development Agreement, and MEPA;
- B. Temporary, preliminary, and permanent injunctive relief enjoining Defendants from continuing their mining operations unless and until the operations are in full compliance with the CUP, Township Zoning Ordinances, the Development Agreement, and Defendants have shown that their operations are not likely to further impair or destroy the groundwater, surface waters, or other natural resources or the public trust in those resources;
- C. An order that allows the Township to immediately enter the Vella Pit to ensure operations have ceased until the circumstances set forth in the preceding paragraph have been met, and, if operations have not ceased, allowing the Township to tag and padlock the Vella Pit against entry by any person or entity; and

- D. Award the Township its costs, attorney fees, and such other relief as the Court deems just under the circumstances.

Respectfully submitted,

BODMAN PLC

By: /s/ Nathan D. Dupes (P75454)

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Attorneys for Plaintiff

Dated: September 28, 2023



**VERIFICATION**

I declare under penalty of perjury that the factual statements set forth in the foregoing complaint are true and correct to the best of my information, knowledge and belief.

ANN ARBOR CHARTER TOWNSHIP

By: Diane O'Connell

Printed: Diane O'Connell

Its: Supervisor