

APPLICATION FOR APPEAL	DECISION	CASE NUMBER: <u>AP-17-01</u>
APPLICANT Theodosia Price, Successor Trustee of the Barbara Scott Price Revocable Trust c/o Robert J. Lenz 202 North Center Street Suite 2 Bloomington, IL 61701	_____ _____ _____ FOR OFFICE	Filing Date: <u>Feb. 6, 2017</u> Hearing Date: <u>3-7-17</u> Decision Date: <u>3-7-17</u> USE ONLY

TO THE MCLEAN COUNTY ZONING BOARD OF APPEALS:

Appeal is hereby taken from the order of the Director
 decision Assistant Director
 requirement Deputy Director

of the McLean County Department of Building and Zoning.

The order, decision, requirement or determination from which this appeal is taken is:

The Decision of the Director of Building and Zoning found in the correspondence dated January 18, 2017 to Carri Scharf Trucking, Inc., a copy of which is attached hereto as Exhibit "A".

The grounds for this appeal are:

The decision of the Director does not conform with the record and requirements of this case and does not require Scharf to remedy events of default as more particularly set forth in the Appeal attached hereto as Attachment No. 1.

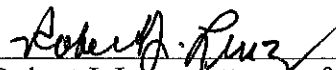
ADDITIONAL INFORMATION:

Attachment No. 1: Appeal of Administrative Decision Enforcing the Terms of the Special Use Permit

Attachment No. ____: _____

I (we) certify that all of the above statements and the statements contained in any attachments submitted herewith are true to the best of my (our) knowledge and belief.

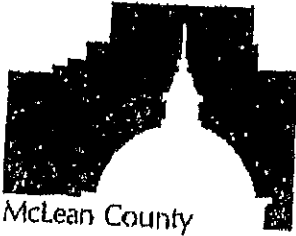
Date: February 3, 2017


 Robert J. Lenz, Attorney for Applicant

RECEIVED

FEB 06 2017

ZONING



McLean County

Department of Building & Zoning
(309) 888-5160 Fax (309) 888-5768 www.mcleancountyil.gov
115 East Washington Street, Room M102, P.O. Box 2400,
Bloomington, Illinois 61702-2400

January 18, 2017

Carri Scharf Trucking, Inc.
Joseph Scharf
7 Carri Drive
Bloomington, IL 61705

Re: Re: Reclamation for the Price/Scharf Gravel Pit approved in Case 97-11-S on
Parcel # 34-01-400-003 in the Agriculture District

Dear Mr. Scharf:

Please find attached a schedule for reclamation of the Price/Scharf Gravel Pit. If you agree with this proposal, please sign and send a copy back to me so I may place it on file and notify the property owners.

If I have not received a signed copy of the agreement by February 1, 2017, the Department of Building and Zoning will go forward with its recommendation to increase the bond provided by Carri Scharf Trucking sufficient to bring the property into compliance with your permit.

Sincerely,

A handwritten signature in black ink that reads "Philip Dick".

Philip Dick, AICP, Director

CC: Bill Wasson, McLean County Administrator
Don Knapp, First Civil Assistant State's Attorney
Rich Marvel, Counsel for Carri Scharf Trucking

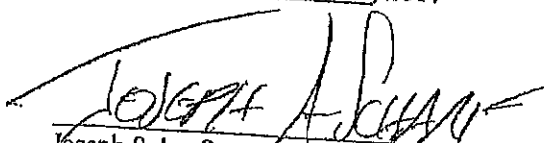
EXHIBIT A

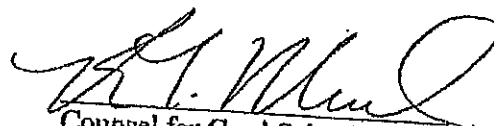
I, Joseph Scharf, acknowledge that I am required under the permit I obtained in Case 97-11-S to fully reclaim the gravel pit located on parcel # 34-01-400-003. I also acknowledge that said property remains unreclaimed, and agree to abide by the reclamation plan outlined below.

Reclamation Plan

- January 2017 Remove scale from property.
- February 2017 Remove scale foundation. Install an outlet pipe from the H-1 Lake to Klickapoo Creek that meets the requirements of Statewide Permit #7.
- March 2017 Distribute the sand over the premises or place the sand in the H-1 Lake.
- April 2017 Clear an area to stock pile top soil for use in reclamation of the site.
Have surveyor mark the line for the top of bank for the edge of the H-1 Lake 50 feet from the east and west property lines as shown in the reclamation plan.
Bring top soil onto the property; continue as needed throughout the project.
- May 2017 Install top soil over sand and around H-1 Lake to be 50 feet from east and west property lines and with a slope of 3 to 1 (3 feet of run per 1 foot of rise) above the water line.
- June 2017 Dress up property.
- July 2017 Spread top soil.
- September 2017 Seed the property.
Have an engineer certify that the H-1 Lake is not closer to the east and west property lines than 50 feet and that the slope above the water line of the H-1 Lake is not steeper than 3 to 1.

Dated: 1-25, 2017


Joseph Scharf


Counsel for Carri Scharf Trucking



RICHARD T. MARVEL
p: 309.807.2885
e: rtm@richmarvel.com
businesslawIL.com

January 26, 2017

Mr. Phil Dick
Building & Zoning
Email: Philip.Dick@mcleancountyil.gov

Re: Reclamation Plan

Dear Phil:

It was nice to talk with you today regarding the Reclamation of the Price/Scharf Gravel Pit relating to Case 97-11-S on Parcel Number: 34-01-400-003. In response to the ongoing negotiations regarding the reclamation plan, Scharf agrees to your proposal dated, January 18, 2017. I hand delivered an original signed agreement to your attention on January 26, 2017.

During our meeting, we discussed the plan and in particular our ability to complete the reclamation plan so long as we have access to the property. Scharf can only perform the reclamation if given, written, permission to perform the work. Scharf has been precluded from entering the property to perform any reclamation work. The only way we can perform is to have access. Without access we are precluded from performing any of the work that is necessary and agreed to between Scharf and the County. Best regards.

Very truly yours,

RICHARD T. MARVEL

RTM:tl

**BEFORE THE MCLEAN COUNTY ZONING BOARD OF APPEALS RE:
SPECIAL USE PERMIT IN CASE NUMBER 97-11-S**

**APPEAL OF ADMINISTRATIVE DECISION ENFORCING THE TERMS
OF THE SPECIAL USE PERMIT**

NOW COMES THEODOSIA PRICE, Successor Trustee of the Barbara Scott Price Revocable Trust by Meyer Capel, A Professional Corporation, her attorneys, to appeal the administrative decision by the Director of Building and Zoning pursuant to §350-17(c) of the McLean County Ordinance relating to zoning. In support hereof; THEODOSIA PRICE states as follows :

1. On or about February 17, 1997, Carri Scharf Trucking, Inc. (hereinafter "Scharf"), filed an Application for Special Use to develop a gravel pit on property owned by William and Barbara Price, for which title was subsequently transferred to the Barbara Scott Price Revocable Trust.

2. The McLean County Department of Building and Zoning filed a Staff Report for a Special Use in this case dated March 18, 1997, which recommended to the Zoning Board of Appeals that the Application met the standards of the applicable County Ordinance, subject to certain conditions as therein provided .

3. The Zoning Board of Appeals held four public hearings during March, April and May 1997. At the conclusion of the public hearings, four members of the Board of Appeals voted to recommend granting the Application for Special Use Permit but two members voted "no". Since there were not five members voting in favor of the proposed Special Use, the case was sent to the County Board without recommendation.

4. At the May 20, 1997 meeting of the County Board of McLean County, a Special Use was approved along with the Findings and Recommendations of the McLean County Zoning Board of Appeals which included fifteen (15) stipulations as set forth in the Findings of Fact. Notice of the approval by the County Board was provided in writing to Scharf and to the owner of the property.

5. Construction Permit No. 8722 was issued by the Department of Building and Zoning on June 13, 1997.

6. Within a short time after commencing operations, the Applicant was in violation of one or more provisions of the Special Use Permit including but not limited to, the failure to proceed with reclamation on a continuing basis throughout the life of the facility and has remained in violation to the date hereof.

7. The decision of the Director of Building and Zoning from which this appeal is taken is found in the correspondence dated January 18, 2017, to Scharf, a copy of which is attached hereto as Exhibit "A". This document appears on its face to allow Scharf to adopt a Reclamation Plan proposed by the Director that does not conform with the record and requirements of this case and does not require Scharf to remedy events of default.

8. The owner supports the County's position that Scharf has been and remains in violation of certain Special Use Permit conditions, particularly concerning reclamation and the owner shares the County's ultimate goal to see that the property is properly reclaimed.

9. The owner will consent for Scharf to have access to the property providing the following conditions are met:

A. The County does not suspend its efforts to collect on the present surety for the \$50,000.00 bond.

B. The County proceeds with its previous Notice to request an increase in the Reclamation Bond from \$50,000.00, which the Director has stated is "insufficient to fully reclaim the facility for the extraction of sand, gravel and topsoil" as provided in the Special Use case. If Scharf does not agree to an appropriate Reclamation Plan and requirements to cure other events of default, the County needs to have a sufficient bond in place to enable it to engage another contractor to do the work.

C. The events of default to be cured by Scharf include the following:

(1) The Owner has reported to the Director that a quantity of unclean waste/asphalt/putrid material/other debris must be removed by Scharf before any reclamation work can be commenced.

(2) The Owner has observed equipment and material in the lake that should be removed by Scharf before reclamation can begin. This will require an examination of the bottom of the lake to determine what else, if anything, needs to be removed.

(3) Scharf has stockpiled significant amounts of waste sand in the northwest corner of the subject parcel on about 5 acres which lies outside of the approved site plan; stockpiles in this area are very, very deep.

(4) Scharf trespassed upon the Owner's property outside the limits of the Special Use Permit and dug a trench to connect the lake with Kickapoo Creek. The trench is a violation of Statewide Permit #7, especially Special Condition #4. (See the December 9, 2016 Letter from IDNR, a copy of which is attached hereto as Exhibit "B"). The trench is contrary to the provision in the ZBA Findings of Fact which states, "The lake will not be connected to Kickapoo Creek."

(5) The McLean County Land Evaluation and Site Assessment ("LESA") analysis totaled 232.7 points, with the Soil Assessment scoring 87.7 points out of 100 and the Site Assessment scoring 145 out of 200. A LESA score of above 224 points signifies

that the property was of very high value for protection of agricultural land. The Findings of Fact indicate that Scharf's experts testified that the overburden varied between five and eight feet deep, which included the topsoil. Scharf failed to place newly excavated overburden and topsoil on areas already mined to be used for reclamation. Scharf removed all of the topsoil from the site.

(6) Scharf failed to provide reclamation on a continuous basis as the excavation proceeded.

(7) Scharf failed to place the extracted overburden along the outer perimeter of the previously mined area to form a shoreline with a maintainable slope, 3-foot horizontal to 1-foot vertical. The slope was required to be seeded to control sediment and erosion.

(8) Scharf failed to install and maintain proper sediment and erosion control measures, including installation of silt fence and hay-bale filters to protect the overburden from runoff.

(9) Scharf has failed to maintain the access drive along the East side of the premises and its have damaged it, rendering the driveway unstable, unsafe and impossible for use by the farm equipment of the Owner's tenant.

D. Scharf must be required to implement the following Reclamation Plan:

(1) Stipulation No. 14 of the Findings of Fact provides "**that final reclamation be according to all local, state and federal reclamation requirements at the time the facility is closed to operation, with reclamation proceeding on a continuous basis through-out the life of the facility . . .**" (emphasis added). This Stipulation requires Scharf to satisfy local, state and federal reclamation requirements as of the 23rd day of January, 2014, including but not limited to the following:

(a) §250 -Landscaping of the Illinois Department of Transportation "Standard Specification for Road and Bridge Construction";

(b) Illinois Department of Natural Resources, Endangered Species Division , Division of Water Resources, Statewide Permit No .6;

(c) U.S. Army Corps of Engineers;

(d) Illinois Environmental Protection Agency;

(e) Illinois Department of Natural Resources, Office of Water Resources, Statewide Permit No. 7.

(2) "Reclamation Task List" prepared by Lewis, Yockey & Brown, Inc. which outlines the steps necessary to comply with the Special Use Permit.

(3) Re-grading of the land to a reasonable contour will require bulldozer work on more than 20 acres of waste material to establish new grading profiles . Provide a detailed grading plan.

(4) The Owner has obtained the results of soil borings which were completed under the supervision of Lewis, Yockey & Brown, Inc. The results show that the depth of waste sand varies from 5 feet deep to 24 feet deep before reaching undisturbed soils. The waste sand needs to be removed from the premises, used appropriately as fill material or put into the lake as part of the grading plan.

(5) Obtain a sufficient quantity of topsoil to replace the depth that was removed, and prepare it for seeding.

(6) The land area of the site should be restored to a condition that would support an agricultural use comparable to its prior condition.

(7) Provide the depth of the topsoil to be placed on the property.

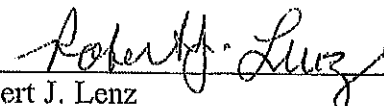
(8) Provide type and quantities of the grass seeds and warrant the coverage to be achieved over the next three years.

We respectfully request that the Zoning Board of Appeals schedule a public hearing at the earliest possible date.

The Owner proposes a tour of the site before the public hearing by all Members of the Zoning Board of Appeals, Department Staff, and others as may be determined by the Staff. The tour can be arranged whenever the County wishes to do so.

Respectfully submitted,
THEODOSIA PRICE, Successor Trustee of
the Barbara Scott Price Revocable Trust,

By Meyer Capel,
A Professional Corporation, Her Attorneys,

By 
Robert J. Lenz

Robert J. Lenz
Meyer Capel, A Professional Corporation
202 North Center Street, Suite 2
Bloomington, IL 61701
Phone: 309/829-9486
Fax: 309/ 827-8139
Email: blenz@MeyerCapel.com
ARDC : 1619217



Department of Building & Zoning
(309) 888-5160 Fax (309) 888-5768 www.mcleancountyil.gov
115 East Washington Street, Room M102, P.O. Box 2400,
Bloomington, Illinois 61702-2400

January 18, 2017

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7 Carri Drive
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Sincerely,

A handwritten signature in cursive script that reads "Philip Dick".

Philip Dick, AICP, Director

CC: Bill Wasson, McLean County Administrator
Don Knapp, First Civil Assistant State's Attorney
Rich Marvel, Counsel for Carri Scharf Trucking

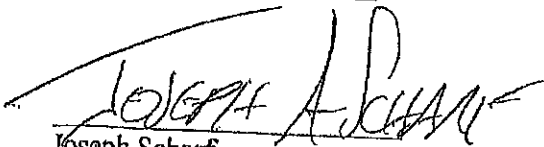
EXHIBIT A

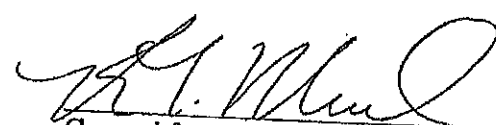
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Reclamation Plan

- | | |
|----------------|--|
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| February 2017 | Remove scale foundation. Install an outlet pipe from the H-1 Lake to Kickapoo Creek that meets the requirements of Statewide Permit #7. |
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| September 2017 | Seed the property.
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Dated: 1-25, 2017


Joseph Scharf


Counsel for Carri Scharf Trucking



RICHARD T. MARVEL
p: 309.807.2885
e: rtm@richmarvel.com
businesslawIL.com

January 26, 2017

Mr. Phil Dick
Building & Zoning
Email: Philip.Dick@mcleancountyil.gov

Re: Reclamation Plan

Dear Phil:

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Very truly yours,

RICHARD T. MARVEL

RTM:tl



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

Bruce Rauner, Governor
Wayne A. Rosenthal, Director

December 9, 2016

RECEIVED
DEC 12 2016

SUBJECT: Price Gravel Pit
Kickapoo Creek Floodplain
McLean County

Robert J. Lenz
Meyer Capel, P.C.
202 North Center St., Suite 2
Bloomington, Illinois 61701

Dear Mr. Lenz:

Thank you for your December 2, 2016 inquiry concerning Carri Scharf Trucking's construction of a drainage way between the Price Gravel Pit and the channel of Kickapoo Creek.

Although the construction of outfall structures and drainage ditch outlets generally qualify for approval under Illinois Department of Natural Resources, Office of Water Resources (IDNR/OWR) Statewide Permit No. 7 (copy enclosed), the drainage way shown on the photos provided with McLean County's letter of July 26, 2016 indicates that the drainage way does not comply with all conditions of that permit. In particular, the drainage way has not been vegetated or otherwise stabilized as required by Special Condition 3 and the disturbed floodway area, which apparently still contains piles of spoil material, has not been restored to its original contours and seeded as required by Special Condition 4.

To bring the project into compliance with the Rivers, Lakes and Streams Act (615 ILCS 5) and IDNR/OWR regulations, one of the following courses of action will need to be taken:

1. The drainage way outlet to the creek would need to be blocked until the drainage way has been stabilized and all excess spoil material removed from the floodway. Stabilization of the drainage way would require regrading and revegetating its banks to 2 horizontal to 1 vertical or flatter side slopes. To restore the floodway area, all spoil material would need to be removed from the floodplain or placed within the gravel pit such that ground elevations in the pit area would not exceed original ground elevations. All disturbed floodway areas would then need to be seeded or otherwise stabilized;

EXHIBIT B


Robert J. Lenz
December 9, 2016
Page 2

2. An outfall pipe leading from the lake to the creek would need to be installed, the drainage way backfilled and all disturbed floodway areas restored to their original contours and seed or otherwise stabilized. Any excess spoil material would need to be removed from the floodplain or placed within the gravel pit such that ground elevations in the pit area would not exceed original ground elevations; or
3. The drainage way would need to be backfilled and all disturbed floodway areas restored to their original contours and seeded or otherwise stabilized. Any excess spoil material would need to be removed from the floodplain or placed within the gravel pit such that ground elevations in the pit area would not exceed original ground elevations.

By copies of this letter to the McLean County Department of Building and Zoning and Farnsworth Group, IDNR/OWR asks that one of these three courses of action be carried out in conjunction with corrective work being required to resolve the violation of McLean County's Special Use Permit and Flood Plain regulations.

If you have any other questions or concerns, please contact Kristian Peterson of my office at 217/558-4532.

Sincerely,



Michael L. Diedrichsen, P.E.
Acting Manager, Downstate Resgulatory Programs

KAP:MLD:cjp

Enclosure

cc: McLean County Dept. of Building & Zoning (Philip Dick)
Farnsworth Group, Inc. (Don Adams)
Illinois Environmental Protection Agency (Thaddeus Faught)

ILLINOIS DEPARTMENT OF NATURAL RESOURCES
OFFICE OF WATER RESOURCES
ONE NATURAL RESOURCES WAY
SPRINGFIELD, ILLINOIS 62702-1271

STATEWIDE PERMIT NO. 7

AUTHORIZING THE CONSTRUCTION OF OUTFALLS

PURPOSE

The purpose of this Statewide Permit is to authorize the construction of outfall structures and drainage ditch outlets which have insignificant impact on those factors under the jurisdiction of the Illinois Department of Natural Resources, Office of Water Resources. It is no longer necessary to submit applications to, or obtain individual permits from, the Illinois Department of Natural Resources, Office of Water Resources for activities meeting the specified terms and conditions of this permit. If a project would not meet all of the terms and conditions of this permit, a formal permit application must be submitted.

APPLICABILITY

This permit applies to all outfall structures and drainage ditch outlets on all Illinois rivers, lakes and streams under the Department's jurisdiction except Lake Michigan and those in Lake, McHenry, Cook, DuPage, Kane and Will Counties for which regulatory floodways have been designated pursuant to 17 Illinois Administrative Code 3708. This permit does not apply to projects which conflict with a federal, state or local project or improvement, or with any other rule of the Department.

COORDINATION WITH OTHER AGENCIES

This permit does not supersede nor relieve any permittee's responsibility to obtain other federal, state or local permits. The local (county or municipal) regulatory official and the U. S. Army Corps of Engineers' regulatory functions office should be contacted to obtain any required permits.

SPECIAL CONDITIONS

In order to be authorized by this permit, an outfall structure or drainage ditch outlet must meet the following special conditions.

1. An outfall structure, including any headwall or end-section, shall not extend riverward or lakeward of the existing adjacent natural bank slope or adjacent bank protection.

ROBERT LENZ

2. The velocity of the discharge shall not exceed the scour velocity of the channel soil, unless channel erosion would be prevented by the use of riprap or other design measures.
3. Outlets from drainage ditches shall not be opened to a stream until the ditch is vegetated or otherwise stabilized to minimize stream sedimentation.
4. Disturbance of streamside vegetation shall be kept to a minimum during construction to prevent erosion and sedimentation. All disturbed floodway areas, including the stream banks, shall be restored to their original contours and seeded or otherwise stabilized upon completion of construction.

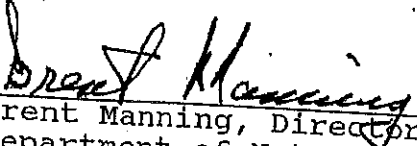
GENERAL CONDITIONS

1. This permit is granted in accordance with the Rivers, Lakes and Streams Act, 615 ILCS 5 (1996 State Bar Edition).
2. This permit does not convey title to any permittee or recognize title of any permittee to any submerged or other lands, and furthermore, does not convey, lease or provide any right or rights of occupancy or use of the public or private property on which the project or any part thereof will be located, or otherwise grant to any permittee any right or interest in or to the property whether the property is owned or possessed by the State of Illinois or by any private or public party or parties.
3. This permit does not release the permittee from liability for damage to persons or property resulting from any activity covered by this permit and does not authorize any injury to private property or invasion of private rights.
4. This permit does not relieve the permittee of the responsibility to obtain other federal, state or local authorizations required for the construction of the permitted activity; and if the permittee is required by law to obtain approval from any federal or other state agency to do the work, authorization granted by this permit is not effective until the federal and state approvals are obtained.
5. The permittee shall, at his own expense, remove all temporary piling, cofferdams, false work, and material incidental to the construction of the project from the floodway in which the work is done. If the permittee fails to remove such structures or materials, the Illinois Department of Natural Resources, Office of Water Resources may have removal made at the expense of the permittee. If the activity is on a public body of water and if future need for public navigation or public interests, by the state or federal government, necessitates changes in any part of the structure or structures, such changes shall be made by and at the expense of the permittee or permittee's successors as required by the Department of Natural Resources or other properly constituted agency, within sixty (60) days from receipt of written notice of the necessity from the Department or other agency, unless a longer period of time is specifically authorized.

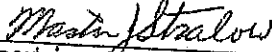
6. If any activity authorized by this permit is located in or along a meandered lake, the permittee and the permittee's successors shall make no claim whatsoever to any interest in any accretions caused by the project.
7. In issuing this permit, the Illinois Department of Natural Resources does not approve the adequacy of the design or structural strength or improvement authorized by this permit.
8. This Statewide Permit shall remain in effect until such time as it is modified, suspended, or revoked by the Department of Natural Resources.

This Statewide Permit was issued on August 1, 1986 and last modified or corrected June 15, 1998.

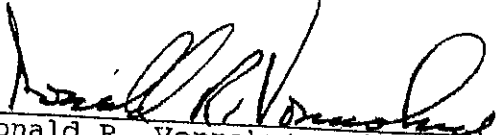
APPROVED:


Brent Manning, Director (DNR)
Department of Natural Resources

EXAMINED AND RECOMMENDED:


Martin O. Stralow, Manager
Division of Water Resource Management

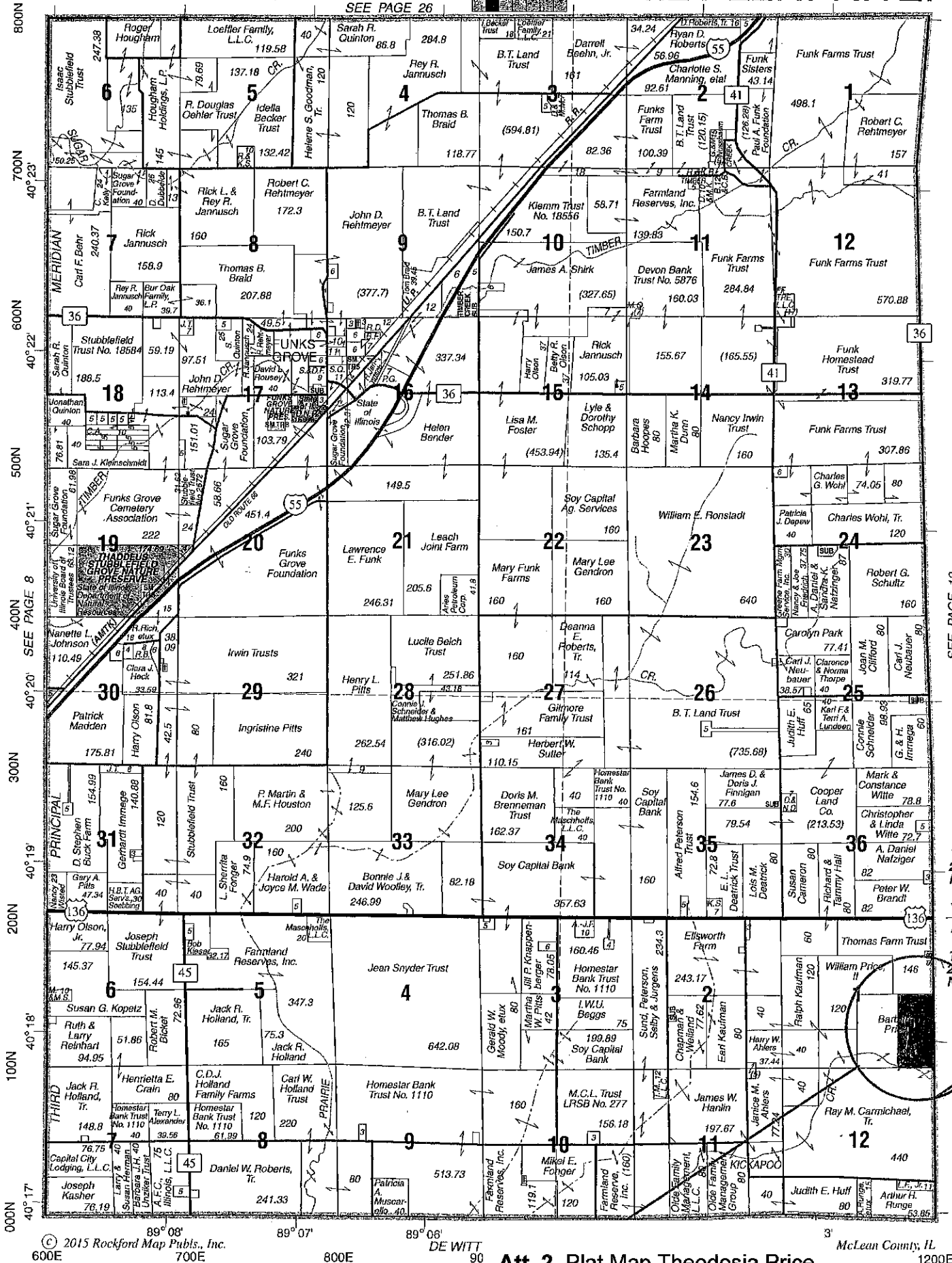
APPROVAL RECOMMENDED:


Donald R. Vonnahme, Director
Office of Water Resources

FUNKS GROVE

SEE PAGE 26

T.21-22N.-R.1E.



SEE PAGE 12

T. 22 N. - T. 21 N.

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Att. 2 Plat Map Theodosia Price

McLean County, IL