

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Paul Christian Pratapas,	)	
	)	
Complainant,	)	
	)	
v.	)	No: <b>PCB 2023-075</b>
	)	
Willow Run by M/I Homes,	)	(Enforcement – Water)
	)	
Respondent.	)	

**Notice of Electronic Filing**

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board the attached **Respondent Willow Run By M/I Homes’ Motion That The Board Determine That The Formal Complaint Is Frivolous Or, In The Alternative, To Dismiss The Complaint Pursuant To 735 ILCS 5/2-619(a)(9), Memorandum in Support and Exhibits**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

By: *David J. Scriven-Young*  
David J. Scriven-Young

Date: January 10, 2023

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**Certificate of Service**

The undersigned, an attorney, hereby certifies that the above Notice and any attached documents were served via email transmission to the Clerk and all other parties listed below at the addresses indicated by 5:00 p.m. on January 10, 2023.

Illinois Pollution Control Board  
Don Brown – Clerk of the Board  
100 W. Randolph St., #11-500  
Chicago, IL 60601  
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Paul Christian Pratapas  
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Respectfully submitted,

By: */s/ David J. Scriven-Young*  
David J. Scriven-Young

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	No. PCB 2023-075
	)	
WILLOW RUN BY M/I HOMES,	)	(Enforcement – Water)
	)	
Respondent.	)	

**RESPONDENT WILLOW RUN BY M/I HOMES' MOTION  
THAT THE BOARD DETERMINE THAT THE FORMAL COMPLAINT IS  
FRIVOLOUS OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT  
PURSUANT TO 735 ILCS 5/2-619(a)(9)**

NOW COMES the Respondent, WILLOW RUN BY M/I HOMES (“M/I”), by and through its attorneys, Corporate Law Partners, PLLC and Peckar & Abramson, P.C., and for its Motion that the Board Determine that the Formal Complaint (“Complaint”) of the Complainant, PAUL CHRISTIAN PRATAPAS (“Pratapas”), is Frivolous pursuant to 35 Ill. Admin. Code § 103.212(a) or, in the Alternative, to Dismiss the Complaint pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-619(a)(9), does hereby state as follows:

1. On December 12, 2022, Pratapas filed a Complaint alleging that M/I violated 415 ILCS 5/12(a) and (d) and 35 Ill. Admin. Code § 304.141(b).
2. The Board should determine that the Complaint is frivolous pursuant to 35 Ill. Admin. Code § 103.212(a) because it fails to state a cause of action upon which the Board can grant relief, for three reasons. First, the Complaint fails to allege, as required, the extent, duration, or strength of the offending event. Second, the Complaint relies solely on legal conclusions that are not based upon any facts contained in the Complaint. Third, the Complaint seeks relief that the Board does not have authority to grant.

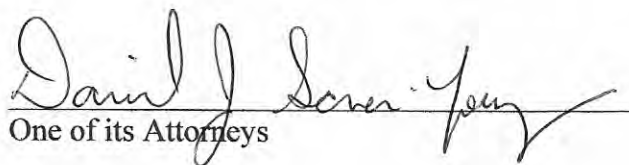
3. Alternatively, this Board should dismiss the Complaint pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-619(a)(9) because Pratapas's claims are barred by affirmative matter avoiding the legal effect of or defeating the claims. The undisputed facts clearly evidence that concrete wash water, slurry, and sediment laden water were managed and controlled in compliance with the NPDES permit, which negates any possible finding of a violation of 35 ILCS 304.141(b). Further, there is no evidence of the creation of any water pollution hazard on December 9, 2022 in violation of 415 ILCS 5/12(a) and (d).

4. This motion is supported by M/I's Memorandum of Law and Jason Polakow's Affidavit and exhibits thereto, which are being filed contemporaneously herewith.

WHEREFORE, Respondent WILLOW RUN BY M/I HOMES respectfully requests that the Board enter an order (a) determining that Complainant Paul Christian Pratapas' Formal Complaint is frivolous, or (b) in the alternative, dismissing the Formal Complaint with prejudice pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-619(a)(9), and (c) providing any other relief that this Board deems just.

Respectfully submitted,

WILLOW RUN BY M/I HOMES

  
One of its Attorneys

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Attorneys for Respondent Willow Run by M/I Homes

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	No. PCB 2023-075
	)	
WILLOW RUN BY M/I HOMES,	)	(Enforcement – Water)
	)	
Respondent.	)	

**RESPONDENT WILLOW RUN BY M/I HOMES' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION THAT THE BOARD DETERMINE THAT THE FORMAL COMPLAINT IS FRIVOLOUS OR, IN THE ALTERNATIVE, TO DISMISS THE COMPLAINT PURSUANT TO 735 ILCS 5/2-619(a)(9)**

**INTRODUCTION**

Complainant Paul Christian Pratapas (“Pratapas”) is a serial filer of complaints before this Board. Since July 2022, Pratapas has filed over twenty similar complaints against developers and municipal entities alleging water pollution violations at construction sites near his home in Naperville. Pratapas’ *modus operandi* appears to be that he goes to construction sites on rainy days, takes a couple of photographs, and then files a template complaint before this Board against the developer and (sometimes) the municipal entities that own the sites or the third-party inspectors for the sites. Bizarrely, each of the twenty-plus complaints (including one filed against Naperville Mayor Steve Chirico in PCB Case No. 2023-077) also allege that the respondents “likely” committed “fraud” associated with “inspection reports and contractor certifications” as well as “[f]raudulent submission/approval of boiler plate [*sic*] SWPPP with no intent/ability to comply . . . .” Given that Pratapas files boilerplate complaints before this Board and apparently trespasses onto private construction sites, it is ironic that he accuses respondents of boilerplate plans and criminal misconduct.

In this case, Pratapas has filed one of his boilerplate complaints against M/I, which is a developer of a new residential housing community in Plainfield, Illinois. The Formal Complaint (“Complaint”), which is attached hereto as Exhibit A, alleges that, on “December 9, 2002, 11:40am while raining” he observed a water pollution violation, *i.e.*, “toxic concrete washout water and slurry” not being managed on the site. Pratapas attaches several black and white copies of photographs to the Complaint, which are completely dark and indecipherable. As discussed below, the Board should disregard these photographs as failing to provide any factual information in support of Pratapas’ allegations. Therefore, the Board should determine that the Complaint is frivolous, or in the alternative, dismiss the Complaint with prejudice pursuant to 35 Ill. Admin. Code § 101.500 and 735 ILCS 5/2-619(a)(9).

**ARGUMENT**

**I. The Complaint Should Be Determined to Be Frivolous Pursuant to 35 Ill. Admin. Code § 103.212(a)**

**A. Legal Standard**

The Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (the “Act”) authorizes citizens to bring enforcement actions before the Board, alleging violations of the Act or Board regulations. Section 31(d) of the Act provides:

Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder .... Unless the Board determines that such complaint is duplicative or *frivolous*, it shall schedule a hearing....

415 ILCS 5/31(d) (emphasis supplied). Section 31(c), referred to in the above-quoted passage, in turn states that the complaint “shall specify the provision of the Act or the rule or regulation ... under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation ....” 415 ILCS 5/31(c).

The Board's procedural rules require that a complaint must include the "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations" and a "concise statement of the relief that the complainant seeks." 35 Ill. Adm. Code 103.204(c). Thus, the Act and the Board's procedural rules "provide for specificity in pleadings". *Rocke v. PCB*, 78 Ill. App. 3d 476, 481 (1st Dist. 1979).

In assessing the adequacy of pleadings in a complaint, the Board has accordingly stated that "Illinois is a fact-pleading state which requires the pleader to set out the ultimate facts which support his cause of action." *People v. Blick's Constr. Co.*, PCB No. 13-43, 2013 Ill. ENV LEXIS 151 \*18 (May 16, 2013). "[L]egal conclusions unsupported by allegations of specific facts are insufficient." *La Salle Nat'l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993). *See also Foxfield Realty v. Kubala*, 287 Ill. App. 3d 519, 522 (2d Dist. 1997) ("a motion to dismiss does not admit conclusions of law or of fact that are not supported by allegations of specific facts which form the basis for such conclusions"). Exhibits attached to pleadings "are considered part of the pleadings, and allegations in the pleadings which conflict with facts disclosed in the exhibits are not admitted as true; rather, the exhibits control. *Foxfield Realty*, 287 Ill. App. 3d at 522.

Within 30 days after being served with a complaint, a respondent may file a motion with the Board to dismiss the complaint on the grounds that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). "Frivolous" means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief. 35 Ill. Admin. Code 101.202. When ruling on a motion to dismiss, the Board takes all well-pled allegations as true and draws all inferences from them in favor of the non-movant. *Maracic v. TNT Logistics N. Am. Inc.*, PCB No. 05-212, 2007 Ill. ENV LEXIS 106, \*6 (Mar. 15,



2007). Dismissal is proper only if it is clear that no set of facts could be proven that would entitle complainant to relief. *Id.* To determine whether a cause of action has been stated, the entire pleading must be considered. *Mahomet Valley Water Auth. v. Clinton Landfill, Inc.*, PCB No. 13-22, 2013 Ill. ENV LEXIS 283, \*55 (Sept. 19, 2013).

**B. Respondent's Complaint Must be Determined to be Frivolous Because It Fails to State a Cause of Action Upon Which the Board Can Grant Relief**

With vague statements and conclusions unsupported by well-pled factual allegations, Pratapas purports to allege that M/I failed to manage or control concrete washout water in violation of Section 12 (a) and (d) of the Act and 35 Ill. Admin. Code 304.141(b). Section 12 of the Act provides in relevant part:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, ... or so as to violate regulations or standards adopted by the Pollution Control Board . . . .

...

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

415 ILCS 5/12(a) & (d). The regulation set forth in 35 Ill. Admin. Code 304.141(b) states:

No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA [Clean Water Act] or the Act, unless limitation for such a pollutant has been set forth in an applicable NPDES Permit.

Pratapas is required by the Board's procedural rules to include in the Complaint the "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Admin. Code 103.204(c). While Pratapas has alleged a date and time ("12/9/2022 11:40am") and a location ("S Drauden Rd. and Lockport St., South

Plainfield, IL”)<sup>1</sup>, he does not adequately plead the other required contents of the Complaint. The Complaint is completely devoid of any allegations – factual or otherwise – as to the required “extent, duration or strength” of the offending event. Instead, the Complaint makes legal conclusions, unsupported by any specific facts, regarding “[t]oxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed” and “pollutants are not controlled and minimized from entering the street and or stormwater system.” Moreover, the photographs attached to the Complaint do absolutely nothing to support his allegations as they are completely indecipherable.

Pratapas’ statements as to the “consequences” or “bad effects” of the alleged violations are also general, legal conclusions devoid of well-pled factual support. Pratapas first states that “[t]he negative environmental impacts of concrete washout and sediment laden water is widely documented and part of the reason for the NPDES permit program.” This conclusion provides no specific facts in support of Pratapas’ claims. Pratapas continues: “Likely fraud of inspection reports and contractor certifications. Fraudulent submission/approval of boiler plate SWPPP with no intent/ability to comply as approved. Poses immediate risk to Canadian Geese using the area during foraging and pond hopping. As well as, to the stormwater system and receiving water(s). Poses threat to wild animals which includes foxes, coyotes, rabbits and lots of other creatures who drink water.”<sup>2</sup> No facts in the Complaint support any claim of fraud (nor would such a claim be within the Board’s jurisdiction). The conclusion that there is “immediate risk to Canadian Geese”

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<sup>1</sup> We note that there is no municipality of “South Plainfield” in Illinois. We assume that Pratapas means the Village of Plainfield, where the Willow Run development is located.

<sup>2</sup> While still lacking any factual support, Pratapas has attempted to vary his boilerplate statements somewhat from his other complaints before the Board to change the supposed negative effect on Canadian Geese during “migration” to during “foraging and pond hopping” and has added to his list of allegedly impacted animals and “other creatures who drink water.”

and the statement that Canadian Geese were “using the area during foraging and pond hopping” do not factually support Pratapas’ claims as there is no allegation that geese were in contact with any concrete washout water or harmed in any way. This is also the case for his conclusion as to supposed threats to other animals and creatures. None of these conclusions are well-pled, factual allegations, and the Board need not take them as true nor draw any inferences from them. *La Salle Nat’l Trust, N.A. v. Vill. of Mettawa*, 249 Ill. App. 3d 550, 557 (2d Dist. 1993). Indeed, the Board may strike such conclusions entirely. *Tarkowski v. Belli*, PCB No. 76-55, 1976 Ill. ENV LEXIS 621, \*1-2 (Apr. 8, 1976) (striking legal conclusions on its own motion).

In addition, Pratapas’ requests for relief #3 (“Investigation into fraudulent SWPP inspection reports and contractor certifications”), #4 (“Due to the overwhelming issue with this particular violation in IL, the fact MI Homes has another open case with the IPCB..., voiding the permit for site....”) and #7 (“An order prohibiting MI Homes from conducting future business in the State of Illinois”) must be stricken as frivolous, since the requests seek relief that the Board does not have the authority to grant. 35 Ill. Adm. Code 101.202; *United City of Yorkville v. Hamman Farms*, PCB No. 08-96, 2008 Ill. ENV LEXIS 352, \*68 (Oct. 16, 2008). As an administrative agency, the Board is a creature of statute, and therefore has only the authority given to it by its enabling act. *Id.* at \*66. The Board cannot grant prayers for relief absent explicit statutory authority. *Id.* at \*67. *See also Vill. of Montgomery v. Aurora Sanitary Dist.*, PCB No. 79-269, PCB No. 79-269, 1980 Ill. ENV LEXIS 460, \*1 (Mar. 20, 1980) (striking portion of prayers for relief requesting that the Board do things that are beyond its statutory authority); *Tarkowski v. Belli*, PCB No. 76-55, 1976 Ill. ENV LEXIS 621, \*1-2 (Apr. 08, 1976) (striking portion of prayers for relief that are not within its jurisdiction or scope of authority under the Act).

Given the above, Pratapas has failed to comply with 35 Ill. Admin. Code 103.204(c) by failing to adequately plead facts in support of any cause of action against M/I. Therefore, the Board should determine that the Complaint is frivolous.

**II. In the Alternative, the Complaint Should Be Dismissed Pursuant to 735 ILCS 5/2-619(a)(9)**

**A. Legal Standard**

Respondent moves also, in the alternative, to dismiss the Complaint pursuant to 735 ILCS 5/2-619(a)(9) on the grounds that “the claim asserted against the defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claims.” Pursuant to 35 Ill. Admin. Code 101.500, the Pollution Control Board “may entertain any motion the parties wish to file that is permissible under the Act or other applicable law, this Part, or the Code of Civil Procedure.” Thus, the Board may entertain a motion to dismiss pursuant to 735 ILCS 5/2-619(a)(9). *See People v. Shell Oil Co.*, PCB No. 97-30, 1998 Ill. ENV LEXIS 480, \*6 (Sept. 17, 1998) (granting motion to dismiss based upon affirmative matters contained outside the complaint).

The phrase “affirmative matter” encompasses “any defense other than a negation of the essential allegations of the plaintiff’s cause of action.” *Omega Demolition Corp. v. Ill. State Toll Highway Auth.*, 2022 IL App (1st) 210158, ¶ 45. The purpose of a section 2-619 motion to dismiss is to dispose of issues of law and easily proved issues of fact at the outset of litigation. *Jackson v. Kane Cty.*, 2021 IL App (2d) 210153, ¶ 10. Because a section 2-619 dismissal resembles the grant of a motion for summary judgment, the Board must determine whether a genuine issue of material fact precludes the dismissal. *See id.* at ¶ 11. Once the respondent satisfies its initial burden of going forward on a section 2-619(a)(9) motion, the burden shifts to the complainant to establish

that the defense is unfounded or that it requires the resolution of an essential element of material fact. *Id.* at ¶

In a Section 2-619 motion to dismiss, while the sufficiency of the complaint is admitted, the “facts asserted which are not of record in the proceeding shall be supported by affidavit.” *See* 35 Ill. Admin. Code 101.242(a); 735 ILCS 5/2-619 (a)(9).

**B. The Claim Asserted Against M/I is Barred by Other Affirmative Matter Avoiding the Legal Effect of or Defeating the Claim**

Assuming for the sake of argument that the Complaint adequately alleges a cause of action for violations of Section 12 of the Act and 35 Ill. Admin. Code 304.141(b), those claims fail as a matter of law and are defeated by the undisputed “other affirmative matters” discussed below.

The alleged wrongful actions are that M/I has “not managed” concrete washout water and slurry “prohibited from making contact with soil and migrating to surface waters or into the ground water” and that “pollutants are not controlled and minimized from entering the street and or stormwater system.” The undisputed facts indicate just the opposite.

**1. The undisputed facts show no violation of 35 Ill. Admin. Code 304.141(b)**

The regulation cited in the Complaint, 35 Ill. Admin. Code 304.141(b), states in relevant part:

No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the CWA or the Act, *unless* limitation for such a pollutant has been set forth in an applicable NPDES Permit. (emphasis added).

In compliance with the Act and applicable regulations, M/I has a General Permit to Discharge Storm Water Associated with Construction Activities, NPDES Permit No. ILR10ZAQS, dated July 15, 2021, covering the Willow Run development project (hereinafter, the “NPDES Permit”).

(A copy of the NPDES Permit is attached as Ex. 1 to J. Polakow Aff., which is attached hereto as Ex. B. *See also* J. Polakow Aff., ¶ 3.) The NPDES Permit (Part III, A.3.) states: “The following non-storm water discharges are prohibited by this permit: concrete and wastewater from washout of concrete (unless managed by an appropriate control) ....” Thus, if there are appropriate controls of non-storm water discharge from concrete washout facilities, such discharges are *not* prohibited by the NPDES Permit and do not constitute a violation of Section 304.141(b) as alleged. *See* 415 ILCS 5/12(f) (“Compliance with the terms and conditions of any permit issued under Section 39(b) of this Act shall be deemed compliance with this subsection except that it shall not be deemed compliance with any standard or effluent limitation imposed for a toxic pollutant injurious to human health”).

The undisputed facts establish that M/I has implemented and maintained appropriate controls for soil erosion and the management of concrete washout. These controls are set forth in its Stormwater Pollution Prevention Plan (“SWPPP”) for the Willow Run project. (A copy of the SWPPP is attached to the J. Polakow Aff. as Ex. 2. *See also* J. Polakow Aff., ¶ 4.) According to Jason Polakow, M/I’s executive overseeing the Willow Run project (J. Polakow Aff. at ¶ 2), the following types of controls are in place at the Willow Run site:

At the Willow Run project, after concrete is poured, the chutes of the ready-mix concrete trucks and hoppers of concrete pump trucks must be washed out to remove the remaining concrete before it hardens. The best management practice objectives of the SWPPP for the concrete washout area is to collect and retain all of the concrete washout water and solids in leak proof containers, which is a metal roll-off bin at the Willow Run site. The metal roll-off bin is designed to securely contain wash water and solids and is portable and reusable. Roll-off providers offer recycling services for the project, such as, picking up the roll-off bins after the wash water has evaporated or has been vacuumed off and the solids have hardened, replacing them with empty washout bins, and delivering the hardened concrete to a recycler rather than a landfill. The concrete washout facility is in a location that provides convenient access to concrete trucks near the area where concrete is being poured. The concrete washout container is a metal roll-off

bin placed on a mix of three (3)-inch stone and gravel. The construction staging area, which includes the concrete washout container, is demarcated by silt-fence. The washout containment area is not located within fifty (50) feet of storm drains, open ditches, or waterbodies. The containers are inspected daily by M/I Homes Construction Managers and during the weekly stormwater pollution prevention program (SWPPP) inspections conducted by the M/I Homes third-party inspector, Gary R. Weber and Associates (GRWA). GRWA also inspects the site and containers after any rainfall event greater than a half-inch (0.50”) of rain. All inspections check for leaks, identify potential damage to the containers from construction activities, and determine whether the washout container has been filled to over seventy-five (75) percent capacity. When the container is filled to over seventy-five (75) percent of its capacity, the wash water is vacuumed off or allowed to evaporate to avoid overflows. Then when the remaining solids have hardened, they are removed and recycled. Damages to the container are repaired promptly. Before heavy rains, the container’s liquid levels are lowered, or the container is covered to avoid an overflow during a rainstorm.

(*Id.* at ¶ 5). Mr. Polakow has further testified and affirmed that “[t]he washout area is located approximately seventy (70) feet away from the nearest storm inlet....[and] is located approximately four hundred and sixty-eight (468) feet away from the nearest detention basin.

(*Id.* at ¶ 6).

Thus, the concrete washout is “managed by appropriate control” in compliance with the NPDES permit and negates any possible finding of a violation of 35 ILCS 304.141(b). Moreover, as set forth below, the undisputed facts establish that no concrete washout water, slurry, sediment or sediment laden water are discharged to the environment such to create water pollution in violation of the Act. Therefore, Pratapas’ claims fail and must be dismissed.

## **2. The undisputed facts show no violation of Section 12(a) or (d) of the Act**

In order to prevail on its claim that M/I violated Section 12(a) and (d) of the Act, Pratapas must be able to establish that M/I disregarded the above controls allowing an alleged discharge on December 9, 2022 to “cause or tend to cause water pollution in Illinois” or to be deposited on land “in such place and manner so as to create a water pollution hazard.”

First, Pratapas has failed to allege any facts to support his conclusion that any washout water or slurry are “toxic.” Second, his general conclusions that washwater, slurry and sediment are “not managed” and that, unnamed “pollutants” are not “controlled or minimized” are not factually supported and are clearly contradicted by the SWPPP for the project and the testimony of Jason Polakow. Moreover, the NPDES Permit provides that if controls need repair or maintenance or some other type of corrective action, it must be performed “as soon as possible and documented within 7 days of an Inspection Report or report of noncompliance” and, “if it is infeasible to complete the installation or repair within the 7-day timeframe”, then the corrective action should be completed “as soon as feasible after the 7-day timeframe.” (J. Polakow Aff., Ex. 1, at 5 (Corrective Actions)). So, even if Pratapas’ allegations had any factual support – which they do not – there is no allegation or evidence that the claimed violations were not corrected as provided for in the NPDES Permit.

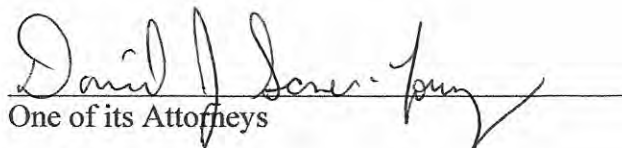
The above undisputed other affirmative matters require dismissal of the Complaint pursuant to 735 ILCS 5/2-619 (a)(9).

CONCLUSION

For these reasons, M/I’s Motion that the Board Determine that the Formal Complaint is Frivolous or, in the Alternative, to Dismiss the Complaint Pursuant to 735 ILCS 5/2-619(a)(9) should be granted.

Respectfully submitted,

WILLOW RUN BY M/I HOMES

  
One of its Attorneys



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Attorneys for Respondent Willow Run by M/I Homes



**1. Your Contact Information**

Name: Paul Christian Pratapas  
Street Address: 1330 E. Chicago Ave. #110  
Naperville  
County: DuPage  
State: IL  
Phone Number: 630.210.1637

**2. Name and Address of the Respondent (Alleged Polluter)**

Name: M/I Homes Naperville  
Street Address: 2135 City Gate Lane #620  
Naperville, IL 60563  
County: DuPage  
State: Illinois  
Phone Number: 630.426.1370

**3. Describe the type of business or activity that you allege is causing or allowing pollution (e.g., manufacturing company, home repair shop) and give the address of the pollution source if different than the address above.**

M/I Homebuilders is building a new neighborhood of housing without adequate and required BMPs

Pollution Source: S DRAUDEN RD AND LOCKPORT ST SOUTH PLAINFIELD, IL

**4. List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated.**

1. 415 ILCS 5.12(a)
2. 415 ILCS 5/12 (d)
3. IL Admin Code Title 35, 304.141(b)

**5. Describe the type of pollution that you allege (e.g., air, odor, noise, water, sewer back-ups, hazardous waste) and the location of the alleged pollution. Be as specific as you reasonably can in describing the alleged pollution.**

Water. Toxic concrete washout water and slurry prohibited from making contact with soil and migrating to surface waters or into the ground water not managed. Across the site, pollutants are not controlled and minimized from entering the street and or stormwater system.

**6. Describe the duration and frequency of the alleged pollution.**

Photographed 12/9/2022 11:40am while raining.

**7. Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity.**

The negative environmental impacts of concrete washout and sediment laden water is widely documented and part of the reason for the NPDES permit program.

Likely fraud of inspection reports and contractor certifications. Fraudulent submission/approval of boiler plate SWPPP with no intent/ability to comply as approved. Poses immediate risk to Canadian Geese using the area during foraging and pond hopping. As well as, to the stormwater system and receiving water(s). Poses threat to wild animals which includes foxes, coyotes, rabbits, and lots of other creatures who drink water.

**8. Describe the relief that you seek from the Board.**

1. Find that Respondent has violated their permit
2. Assess a civil penalty of Fifty Thousand Dollars (\$ 50,000.00) against Respondent for each violation of the Act and Regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation
3. Investigation into fraudulent SWPPP inspection reports and contractor certifications
4. Due to the overwhelming issue with this particular violation in IL, the fact MI Homes has another open case with the IPCB for this very same thing and has made no changes, upon receipt of this formal complaint, voiding the permit for the site until such time as the builder ceases to pollute the surrounding groundwater and surface water and any SWPPP deficiencies related to signage, certifications, inspections, material storage and designated concrete washout area design/implementation are fixed and all IPCB cases resolved
5. An order stating SWPPP plan(s) for phasing and concrete washout areas must be implemented as presented and approved unless documented otherwise with standards being found in the Illinois Urban Manual.
6. An order requiring MI Homes to place SWPPP signage as required by the ILCGP
7. An order prohibiting MI Homes from conducting future business in the State of Illinois

- 9. Identify any identical or substantially similar case you know of brought before the Board or in another forum against this respondent for the same alleged pollution (note that you need not include any complaints made to the Illinois Environmental Protection Agency or any unit of local government).

No identical or substantially similar cases have been brought to The Board which I am aware of.

- 10. I am representing myself as an individual.

11. Paul Christian Pratas  
Complainant's Signature

**CERTIFICATION**

I, \_\_\_\_\_, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

\_\_\_\_\_  
Complainant's Signature

Subscribed to and sworn before me

this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

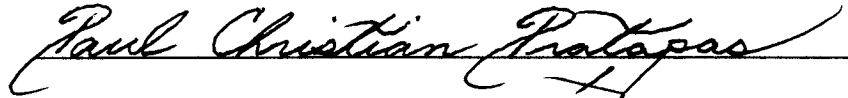
My Commission Expires: \_\_\_\_\_

**NOTICE OF FILING**

**Note to the Complainant:** This Notice of Filing must accompany the Formal Complaint and the Documentation of Service. Once you have completed the Notice of Filing, the Formal Complaint, and the Documentation of Service, you must file these three documents with the Board's Clerk *and* serve a copy of each document on each respondent.

Please take notice that today I, Paul Christian Pratapas, filed with the Clerk of the Illinois Pollution Control Board (Board) a Formal Complaint, a copy of which is served on you along with this Notice of Filing. You may be required to attend a hearing on a date set by the Board.

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**



Complainant's Signature

**Street:** 1330 E Chicago Ave. #110

**City/State/Zip:** Naperville, IL 60540

**Date:** 12.12.2022

**INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

The following information has been prepared by the Board for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation. Information about the Formal Complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5) and the Board's procedural rules (35 Ill. Adm. Code 101, 103). These can be accessed on the Board's website ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules.

**Board Accepting Formal Complaint for Hearing; Motions**

The Board will not accept this Formal Complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202 (definitions of the terms "duplicative" and "frivolous")). "Duplicative" means the complaint is identical or substantially similar to a case brought before the Board or another forum. See 35 Ill. Adm. Code 103.212(a) and item 10 of the Formal Complaint.

"Frivolous" means that the Formal Complaint seeks relief that the Board does not have the authority to grant or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does

not have the authority, however, to award attorney fees to a citizen complainant. See 35 Ill. Adm. Code 103.212(a) and items 5 through 9 of the Formal Complaint.

If you believe that this Formal Complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you received the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. See 35 Ill. Adm. Code 101.504, 103.212(b). If you need more than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after you received the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the Formal Complaint is duplicative or frivolous will stay the 60-day period for filing an Answer to the complaint. See 35 Ill. Adm. Code 103.204(e), 103.212(b); see also 35 Ill. Adm. Code 101.506 (generally, all motions to strike, dismiss, or challenge the sufficiency of any pleading must be filed within 30 days after service of the challenged document).

The party making a motion must "file" the motion with the Board's Clerk and "serve" a copy of the motion on each of the other parties to the proceeding. The Board's filing and service requirements are set forth in its procedural rules (35 Ill. Adm. Code 101.300, 101.302, 101.304), which are located on the Board's website ([pcb.illinois.gov](http://pcb.illinois.gov)).

If you do not file a motion with the Board within 30 days after the date on which you received the Formal Complaint, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing without any input from you. The Board will then assign a hearing officer who will contact you to schedule times for holding telephone status conferences and a hearing. See 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an Answer to this Formal Complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an Answer within 60 days after the Board rules on your motion. See 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

Failing to file an Answer to the Formal Complaint within 60 days after you were served with the complaint may have severe consequences. Failure to timely file an Answer will mean that all allegations in the Formal Complaint will be taken as if you admitted them for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office, or an attorney. See 35 Ill. Adm. Code 103.204(f).

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. See 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an Answer and any motions or briefs and present a defense at hearing.

In defending against this Formal Complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file with the Board your Answer or any other document in the enforcement proceeding. The Board will pay its own hearing costs (e.g., hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3461.





RESPONDENT'S ADDRESS:

**Name:** M/I Homes Naperville  
**Street:** 2135 City Gate Lane #620  
**City/State/Zip:** Naperville, IL 60563

*Paul Christian Pratas*

Complainant's Signature

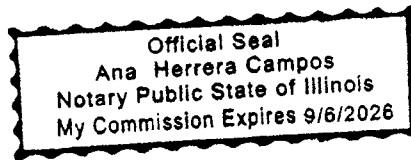
**Street:** 1330 E. Chicago Ave. #110

**City, State, Zip Code:** Naperville, IL 60540

**Date:** 12.12.2022

Subscribed to and sworn before me

this 12 day  
of December, 2022.



*Ana Herrera Campos*  
Notary Public

My Commission Expires: 9/6/2026

A



pcp

3



pcp

A LARGE MAJORITY OF CONSTRUCTION PERSONELL HAVE NO IDEA THE WASHOUT WATER IS A POLLUTANT. ANOTHER FAILURE BY ILEPA.



2

pcp

PRICE OF COMPLIANCE INCORPORATED IN THE HOME VALUES? INSTEAD OF COMPLYING OR RETURNING VALUE/CASH TO CUSTOMER \$ IS POKETED? PUBLIC COMPANIES REPORT THIS AS PROFIT AT EARNINGS CALLS AND ARTIFICIALLY INFLATE STOCK SIMILAR TO WHAT HAPPENED WITH ENRON? THAT FITS REQUIREMENT FOR RACKETEERING, A CONTINUING CRIMINAL ENTERPRISE.

D



# M/I Homes Inc

NYSE: MHO

Overview

Compare

Financials

M/I Homes Inc

## 44.38

+10.19 (29.30%) ↑ past 5 years

Market cap: 1.228 B USD  
P/E ratio: 12.28

52-wk high: 46.00 USD  
52-wk low: 39.00 USD

Dividend yield: 2.25%

Dividend date: 12/15/2022

Next earnings date: 10/12/2022

Analyst rating: Buy

Analyst target price: 48.00 USD

Analyst target range: 45.00 - 51.00 USD

Analyst target range: 45.00 - 51.00 USD

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pcp

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PAUL CHRISTIAN PRATAPAS,	)	
	)	
Complainant,	)	
	)	
v.	)	No. PCB 2023-075
	)	
WILLOW RUN BY M/I HOMES,	)	(Enforcement – Water)
	)	
Respondent.	)	

**AFFIDAVIT OF JASON A. POLAKOW, P.E.**

I, Jason A. Polakow, P.E., a resident of Illinois and being over 18 years of age, declares under penalty of perjury that the following is true and correct:

1. I am currently employed as the Director of Land Development at M/I Homes of Chicago, LLC (“M/I Homes”).

2. I am the executive at M/I Homes overseeing the Willow Run development, located 665 feet southeast of the intersection of Drauden Road and Lockport Street, Plainfield, Illinois 60544.

3. In connection with the Willow Run development, M/I Homes has a General Permit to Discharge Storm Water Associated with Construction Activities (“General Permit”), issued by the Illinois Environmental Protection Agency (IEPA), a true and correct copy of which is attached as Exhibit 1 to this Affidavit.

4. In accordance with Part IV of the General Permit, M/I Homes has a Stormwater Pollution Prevention Plan (“SWPPP”), which includes specifications for erosion and sediment controls, including controls related to concrete washout operations. A true and correct copy of the SWPPP for the Willow Run development is attached as Exhibit 2 to this Affidavit.

5. At the Willow Run project, after concrete is poured, the chutes of the ready-mix concrete trucks and hoppers of concrete pump trucks must be washed out to remove the remaining

**EXHIBIT**  
**- B -**

concrete before it hardens. The best management practice objectives of the SWPPP for the concrete washout area is to collect and retain all of the concrete washout water and solids in leak proof containers, which is a metal roll-off bin at the Willow Run site. The metal roll-off bin is designed to securely contain wash water and solids and is portable and reusable. Roll-off providers offer recycling services for the project, such as, picking up the roll-off bins after the wash water has evaporated or has been vacuumed off and the solids have hardened, replacing them with empty washout bins, and delivering the hardened concrete to a recycler rather than a landfill. The concrete washout facility is in a location that provides convenient access to concrete trucks near the area where concrete is being poured. The concrete washout container is a metal roll-off bin placed on a mix of three (3)-inch stone and gravel. The construction staging area, which includes the concrete washout container, is demarcated by silt-fence. The washout containment area is not located within fifty (50) feet of storm drains, open ditches, or waterbodies. The containers are inspected daily by M/I Homes Construction Managers and during the weekly stormwater pollution prevention program (SWPPP) inspections conducted by the M/I Homes third -party inspector, Gary R. Weber and Associates (GRWA). GRWA also inspects the site and containers after any rainfall event greater than a half-inch (0.50”) of rain. All inspections check for leaks, identify potential damage to the containers from construction activities, and determine whether the washout container has been filled to over seventy-five (75) percent capacity. When the container is filled to over seventy-five (75) percent of its capacity, the wash water is vacuumed off or allowed to evaporate to avoid overflows. Then when the remaining solids have hardened, they are removed and recycled. Damages to the container are repaired promptly. Before heavy rains, the container’s liquid levels are lowered, or the container is covered to avoid an overflow during a rainstorm.

6. The washout area is located approximately seventy (70) feet away from the nearest storm inlet. See, distance map attached as Exhibit 3 to this Affidavit. The washout area is located approximately four hundred and sixty-eight (468) feet away from the nearest detention basin. See, distance map attached as Exhibit 4 to this Affidavit.



Jason A. Polakow, P.E.

Subscribed and sworn to before me  
this 9<sup>th</sup> day of January 2023.



NOTARY PUBLIC







## ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

Project/Site: Willow Run, Plainfield, IL, Will County  
NPDES Permit No: ILR10ZAQS

07/15/2021

We have reviewed your application requesting coverage for Willow Run located at 655 feet SE of the intersection of Lockport Street, and Drauden Road, Plainfield, IL 60544, and determined that storm water discharges associated with industrial activity from construction sites are appropriately covered by the [General NPDES Permit](#) issued by the Agency. Your discharge is covered by this permit effective as of the date of this letter. A copy of the NOI submission can be downloaded at this link: <https://npdes-ereporting.epa.gov/net-cgp/api/public/v1/form/1373547/attachment/zip>.

The Permit includes special conditions regarding the application, Storm Water Pollution Prevention Plan and reporting requirements. Failure to meet any portion of the Permit could result in civil and/or criminal penalties. The Agency is ready and willing to assist you in interpreting any of the conditions of the Permit as they relate specifically to your discharge.

As a Permit Holder, it is your responsibility to:

1. Submit a modified Notice of Intent of any substantial modification to the project such as address changes, new contractors, area coverage, or additional discharges to Waters of the United States within 30 days.
2. Submit a Notice of Termination once the site has completed final stabilization and all storm water discharges from construction activities that are authorized by this Permit are eliminated.

Please reference your permit number ILR10ZAQS in all future correspondence. Should you have any questions concerning the Permit, please contact the Permit Section at (217) 782-0610.

Sincerely,

Darin E. LeCrone  
Manager, Permit Section  
Division of Water Pollution Control

Link to: [General NPDES Permit No. ILR10](#)

cc:

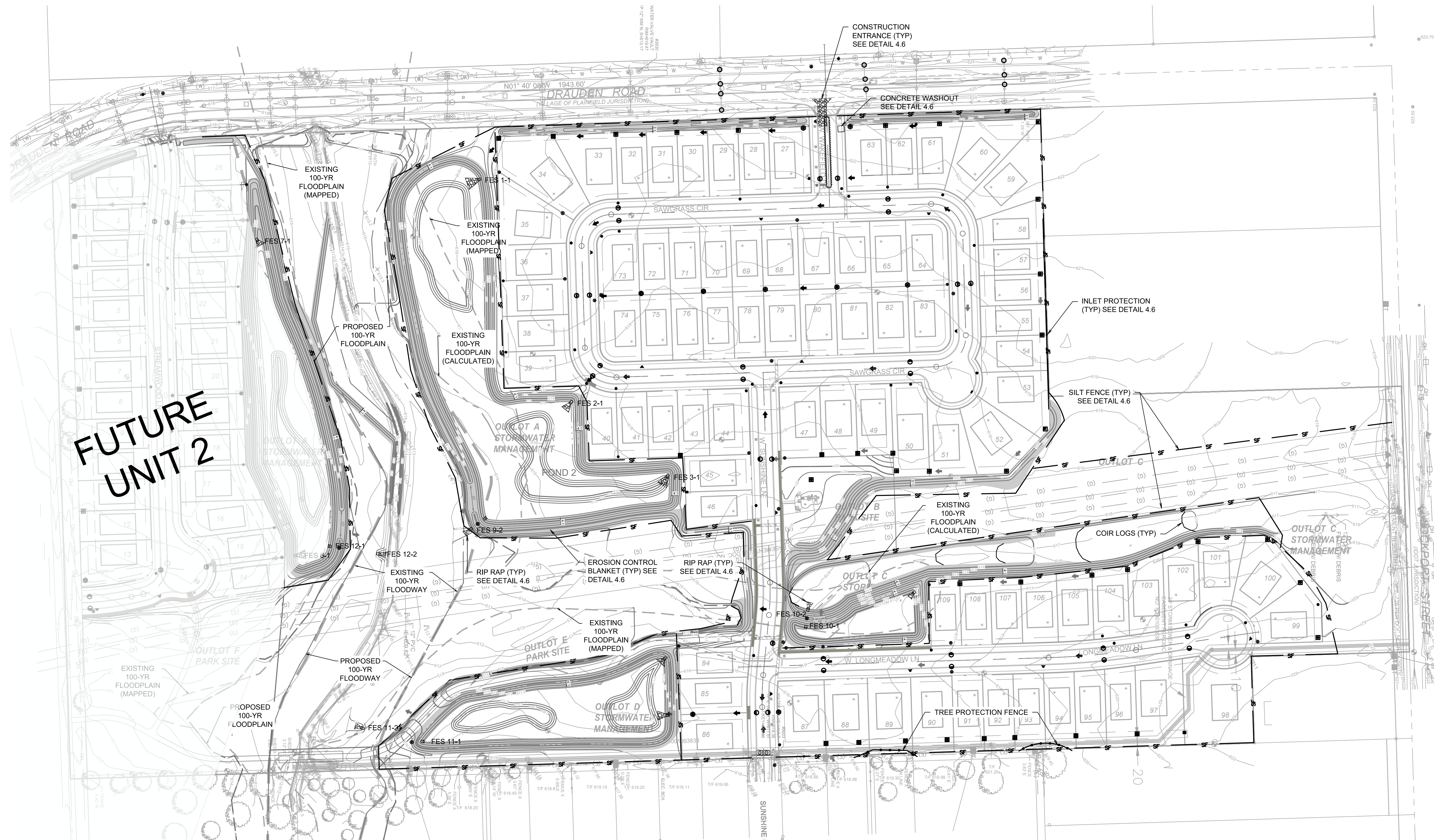
2125 S. First Street, Champaign, IL 61820 (217) 278-5800  
2009 Mall Street Collinsville, IL 62234 (618) 346-5120  
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000  
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200  
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022  
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

PLEASE PRINT ON RECYCLED PAPER

**EXHIBIT  
B - 1**

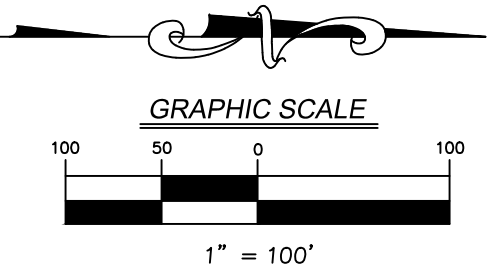




**FUTURE UNIT 2**

EROSION CONTROL LEGEND	
	DITCH CHECK
	INLET PROTECTION - PAVED AREA
	INLET SEDIMENT TRAP
	RIP RAP
	SILT FENCE
	TREE PROTECTION FENCE
	EROSION CONTROL BLANKET

**EXHIBIT B - 2**



REVISIONS		
NO.	DATE	DESCRIPTION
1	05-14-21	REVISED PER VILLAGE COMMENTS
2	06-09-21	REVISED PER VILLAGE COMMENTS

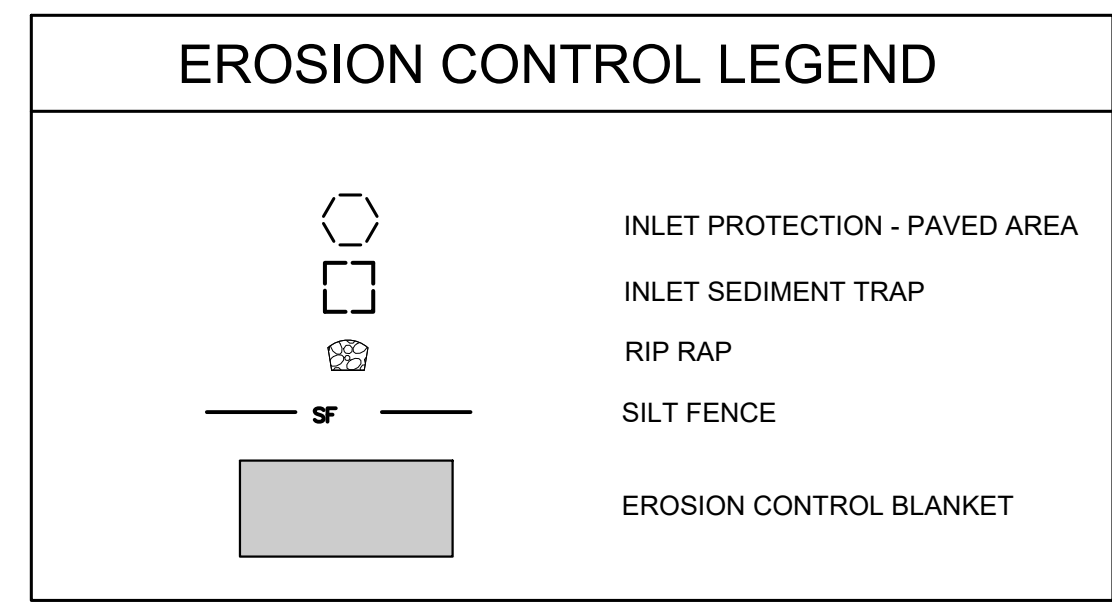
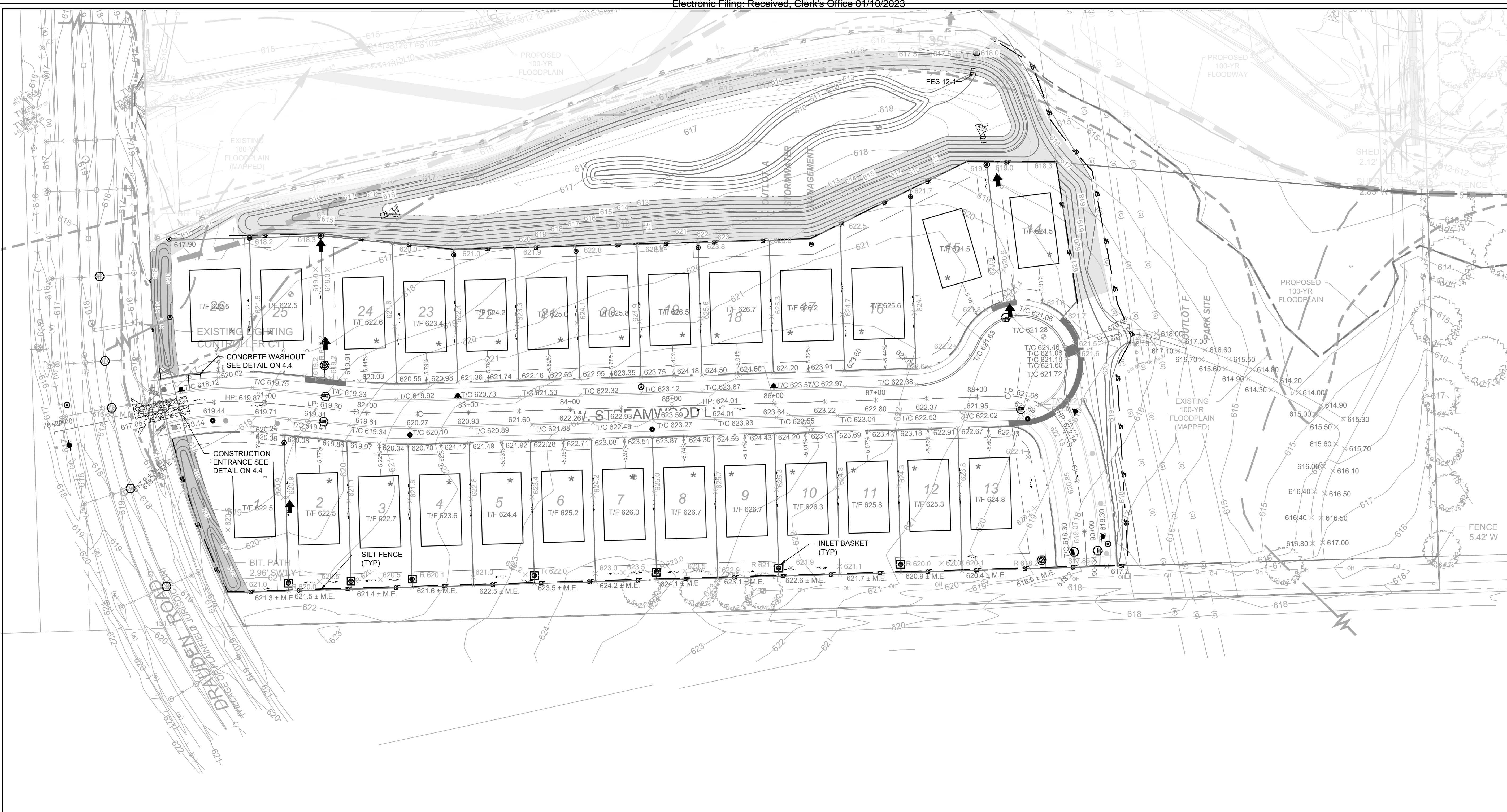
PROJECT NO.:	18250.MI
PROJECT MANAGER:	DG
DESIGNED BY:	MG
DRAWN BY:	DB

**EROSION CONTROL PLAN**  
**WILLOW RUN**  
 PLAINFIELD ILLINOIS

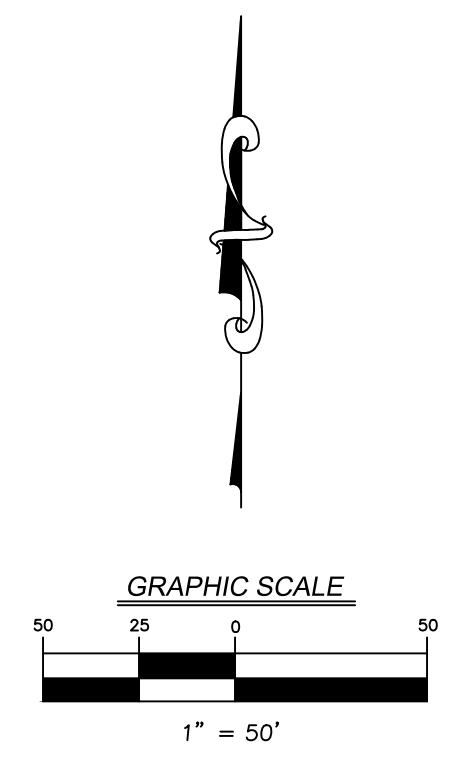
7325 Janes Avenue  
 Woodridge, IL 60517  
 630.724.9200 phone  
 www.v3co.com

DRAWING NO.  
**4.7**





SEE EROSION CONTROL DETAILS ON SHEET 4.4



<b>EROSION CONTROL PLAN</b> <b>WILLOW RUN - UNIT 2</b> PLAINFIELD	PROJECT NO.: 18250.MI PROJECT MANAGER: DG DESIGNED BY: MG DRAWN BY: DB	ORIGINAL ISSUE DATE: 06-21-2022	REVISIONS NO. DATE DESCRIPTION
	7325 Janes Avenue Woodridge, IL 60517 630.724.9200 phone www.v3co.com		DRAWING NO. <b>4.3</b>



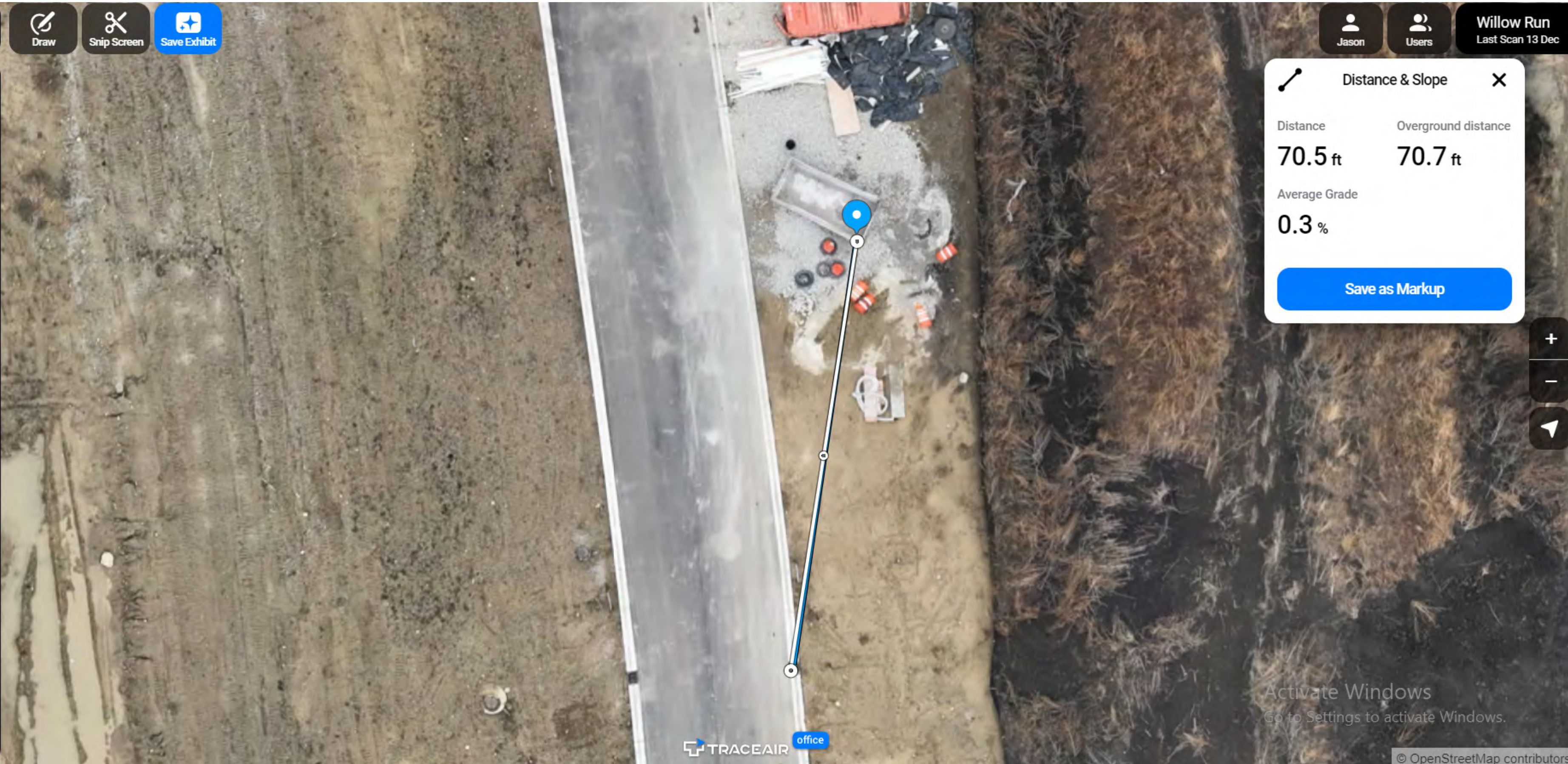
- Clear Map
- Draw
- Snip Screen
- Save Exhibit
- 13 Dec
- Exhibits
- Compare Surfaces
- Overlays
- Markups
- Saved Quantities
- Views
- Files
- Print
- Support

Jason Users Willow Run Last Scan 13 Dec

Distance & Slope

Distance	Overground distance
70.5 ft	70.7 ft
Average Grade	
0.3 %	

Save as Markup



TRACEAIR office

Activate Windows  
Go to Settings to activate Windows.

© OpenStreetMap contributors

EXHIBIT  
B - 3



The screenshot shows a mobile application interface for a mapping tool. On the left is a vertical toolbar with icons for 'Clear Map', 'Draw', 'Snip Screen', 'Save Exhibit', 'Exhibits', 'Compare Surfaces', 'Overlays', 'Markups', 'Saved Quantities', 'Views', 'Files', 'Print', and 'Support'. The main area is an aerial photograph of a residential neighborhood with a road. A white line with circular endpoints is drawn across the road. A blue callout box is attached to the upper endpoint of this line. On the right side, a 'Distance & Slope' information panel is open, displaying the following data:

Distance	Overground distance
468.1 ft	469.9 ft
Average Grade	
1.3 %	

Below the data is a blue button labeled 'Save as Markup'. At the top right, there are user profile icons for 'Jason' and 'Users', and a location indicator 'Willow Run' with the note 'Last Scan 13 Dec'. At the bottom of the map, there is a watermark for 'TRACEAIR office' and a Windows watermark that says 'Activate Windows Go to Settings to activate Windows.'.