STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

v Hon. Judge Alexander

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,
and SUNOCO PIPELINE, L.P., a Texas limited partnership,

Defendants.
_____/

DEFENDANT JORDAN DEVELOPMENT COMPANY'S SECOND MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) AND MCR 2.116(C)(8)

LOZEN, KOVAR & LOZEN, P.C. Timothy J. Lozen (P37683) Matthew C. Lozen (P73062) Attorneys for Plaintiff 511 Fort Street, Suite 402 Port Huron, MI 48060 (810) 987-3970	HAFELI, STARAN, & CHRIST, P.C. John D. Staran (P35649) P. Daniel Christ (P45080) Attorneys for Defendant City of Rochester Hills 2055 Orchard Lake Road Sylvan Lake, MI 48320 (248) 731-3088 jstaran@hsc-law.com THE MIKE COX LAW FIRM PLLC Michael A. Cox (P43039) Danila V. Artaev (P74495) Attorneys for Defendant Jordan Development Company, LLC The Mike Cox Law Firm PLLC 17430 Laurel Park Drive North Ste 120 E Livonia, MI 48152 mc@mikecoxlaw.com dartaev@mikecoxlaw.com

Defendant Jordan Development Company, LLC, ("Jordan"), by its attorneys, The Mike Cox Law Firm PLLC, moves for summary disposition under MCR 2.116(C)(5) and MCR 2.116(C)(8) of plaintiff Don't Drill the Hills, Inc.'s, ("DDH") Amended Complaint.[1] In support of this motion, Jordan relies on the accompanying brief and states as follows:

1. Plaintiff DDH is a Port Huron based non-profit corporation that was formed April 24, 2014 "for purposes which include taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions." (Am Compl ¶1.)
2. DDH seeks a declaratory judgment to void a subsurface lease for oil and gas between the defendants, the City of Rochester Hills and Jordan.
3. DDH claims that the subsurface oil and gas lease violates Section 11.8 of the City Charter and MCL 117.5 and is "void as *ultra vires*." (Am Compl ¶42.)
4. DDH requests a declaratory judgment, but does not allege an "actual controversy" as required under MCR 2.605. There is no "actual controversy" because declaratory judgment is not necessary to guide DDH's future conduct to preserve any legal rights.
5. Rather, DDH seeks to interfere with a contract between the City of Rochester Hills and Jordan—a contract to which Plaintiff DDH is not a party or a beneficiary.
6. Where the plaintiff does not meet the "actual controversy" requirement, the plaintiff must allege a "specific cause of action at law," or "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant." *Duncan v Michigan*, 300 Mich App 176, 192; 832 NW2d 761 (2013).

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[1] In response to DDH's Complaint that was filed May 15, 2014, Jordan filed a motion for summary disposition under MCR 2.116(C)(5) (lack of standing) and MCR 2.116(C)(8) (failure to state a claim) on June 12, 2014. The Amended Complaint does not remedy plaintiff's lack of standing or failure to state a claim. However, for this Court's convenience, pursuant to MCR 2.118(B)(1), Jordan files its second motion for summary disposition to expressly address the allegations in the Amended Complaint.

7. DDH has not alleged a specific cause of action at law and has not pled an injury distinct from the "citizenry at large"—or any actual injury at all. DDH has no standing and summary disposition is appropriate under MCR 2.116(C)(5).
8. Although DDH's Complaint must be dismissed for lack of standing under MCR 2.116(C)(5), the Complaint also fails to state a claim and should be dismissed under MCR 2.116(C)(8). As a matter of law, the subsurface oil and gas lease does not violate any provision of the City Charter or the Home Rule Cities Act.
9. Section 11.8 of the City Charter does not prohibit the City from entering into a subsurface oil and gas lease that does not alter or otherwise impact the public recreation or conservation character of the park.[2]
10. The citizens of Rochester Hills will continue to enjoy the park space to the same extent and in the same manner as before the lease. DDH cannot and does not allege that the subsurface oil and gas lease impedes public recreation or conservation.
11. The City of Rochester Hills continues to own the parks. The lease expressly denies Jordan access to the surface of the parks. Rather, Jordan has the right, but not the obligation to drill horizontally into the subsurface estate.
12. Additionally, the City of Rochester Hills City Council already considered whether the lease would violate Section 11.8. The council and the mayor approved the lease only after a written opinion by the City's attorney that the lease did not violate Section 11.8 of the City Charter.
13. The Home Rule Cities Act, MCL 117.5(1)(e), prohibits a city "to *sell* a park, cemetery, or any part of a park or cemetery…unless approved by a majority of the electors voting on the question at a general or special election." (emphasis added).
14. The contract between the City of Rochester Hills and Jordan is a bona-fide lease, not a sale of property. The lease is for a term of years—five years with a two year

[2] Section 11.8 only applies to "parks" and not to cemeteries. Thus, the City Charter and Count I have nothing to do with the cemetery portion of the lease.

renewal option. The City of Rochester Hills continues to own the subsurface oil and gas estate subject to the exploration and extraction rights in the lease.

15. The Legislature did not include leases on the list of prohibited acts. State law clearly distinguishes between real estate sales fee simple and subsurface oil and gas leases. Accordingly, an oil and gas lease is not a prohibited sale under MCL 117.5(1)(e).
16. Additionally, Michigan comprehensively regulates oil and gas drilling and production in the State. State law, rules, and policy that encourage natural resource development preempt local regulations.
17. Attorneys for the City of Rochester Hills concur with the relief sought in this motion.
18. Attorneys for Jordan contacted plaintiff's attorney to seek concurrence in this motion, but concurrence was not obtained.

WHEREFORE, Jordan respectfully requests that this Court grant summary disposition in its favor under MCR 2.116(C)(5) and MCR 2.116(C)(8), dismiss DDH's Amended Complaint with prejudice, award costs and attorney fees, and further requests that this Court award such other relief as it deems just and equitable.

Respectfully submitted,

THE MIKE COX LAW FIRM PLLC

/s/ Danila V. Artaev (P74495)

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Dated: July 16, 2014

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DEFENDANT JORDAN DEVELOPMENT COMPANY'S BRIEF IN SUPPORT OF ITS MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) AND MCR 2.116(C)(8)

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INTRODUCTION

Plaintiff Don't Drill the Hills, Inc., ("DDH") is a Port Huron based non-profit corporation organized April 24, 2014 for "taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions."[1] (Am Compl ¶1.) Although DDH alleges no actual controversy, legal cause of action, or unique injury, DDH seeks declaratory judgment to second-guess the decision of the duly elected Mayor and City Council to enter into a subsurface oil and gas lease with Defendant Jordan Development Company, LLC, ("Jordan"). DDH is not a party to or a beneficiary of the lease, but DDH seeks to nullify the contract, and requests this Court declare the lease violates Section 11.8 of the City Charter and the Home Rule Cities Act, MCL 117.5(1)(e). On June 25, 2014 DDH filed an Amended Complaint, but the Amended Complaint does not cure DDH's lack of standing or state a claim for relief.

DDH must allege an "actual controversy" for declaratory judgment under MCR 2.605. But DDH does not plead an essential element: "Future conduct" that requires guidance from this Court to preserve DDH's legal rights. Instead, DDH seeks to use declaratory judgment to interfere with a lease contract between the Defendants. DDH and its unnamed members allege purely hypothetical harms to abstract interests that are insufficient to state an "actual controversy." DDH also fails to allege a specific right at law or allege a unique injury that is not shared by all citizens. The Amended Complaint should be dismissed under MCR 2.116(C)(5).

DDH also fails to state a claim for relief because the lease between Jordan and the City of Rochester Hills does not violate the City Charter or the Home Rule Cities Act as a matter of law. The City Charter does not preclude the City from leasing the subsurface oil and gas interests without voter approval. The lease expressly precludes Jordan from entering or interfering with

[1] According to Michigan public records, DDH was incorporated on April 23, 2014 and maintains a registered office at 511 Fort Street, Suite 402, Port Huron, MI 48060—the same address as Plaintiff's attorneys. Indeed, attorney Timothy Lozen, who signed the Complaint, is the registered agent for Plaintiff DDH. Further, the press release announcing the Complaint lists an (856) area code contact number—a number based in Philadelphia suburbs. (**Ex A**.) Plainly, DDH is an organization with little or no connection with Rochester Hills or Oakland County.

the surface estate. Rochester Hills citizens will continue to enjoy the public park land for the same recreation and conservation purposes. DDH cannot and does not allege that the subsurface mineral estate is related to public recreation or conservation, which are the interests that the City Charter protects. MCR 2.116(C)(8) compels dismissal.

The Home Rule Cities Act, MCL 117.5(1)(e), only prohibits the *sale* of parks or cemeteries without voter approval. The contract between the City of Rochester Hills and Jordan is a bona-fide lease for a term of five years with a two-year renewal option. To demonstrate the difference between a sale of land and a subsurface oil and gas lease, different state laws govern the sale and the oil and gas leasing processes. The law presumes the Legislature is aware of other laws and intentionally used "sale" to exclude other similar transactions, such as "leases." Accordingly, this Court should grant Jordan's motion for summary disposition under MCR 2.116(C)(5) and MCR 2.116(C)(8) because DDH has no standing and has not stated a claim for relief as a matter of law.

STATEMENT OF FACTS

Defendant Jordan Development Company, LLC, is a Traverse City based oil and gas exploration company that operates over 450 oil and gas wells in Michigan. Jordan's leases cover over 18,000 acres of State of Michigan land in Oakland County for oil and gas exploration and extraction purposes. Jordan has successfully negotiated oil and gas leases with other local governments throughout Oakland County, including agreements with Waterford Township, Independence Township, Springfield Township, and the City of Pontiac. Notably, Jordan also leases 2,510 acres of subsurface rights from the Huron-Clinton metropark system,[2] and successfully extracts oil and gas in Indian Springs Metropark located in White Lake, Michigan.

[2] The Huron-Clinton Metropark Authority has leased subsurface oil and gas interests since 1993 in exchange for royalties and has acquired about $13 million in revenues from successful wells drilled mainly in the Kensington Metropark. http://www.clarkstonnews.com/Articles-News-i-2012-12-19-249945.113121-sub-Search-is-on-for-oil.html. See also "Indian Springs Metropark

In 2012, Jordan approached the City of Rochester Hills to negotiate a subsurface lease for oil and gas underneath Nowicki Park, Tienken Park, and the VanHoosen Jones Stony Creek Cemetery. (Am Compl ¶9.) On December 3, 2012, at a regular meeting of the City Council, the City Council approved the subsurface oil and gas lease with Jordan.[3] (*Id.* ¶12.) Prior to the vote, the City Council received a written attorney opinion that the lease did not violate Section 11.8 of the City Charter. (Staran Legal Opinion, **Ex B**.) Further, the City of Rochester Hills and Mayor Barnett consulted the Michigan Department of Environmental Quality ("DEQ") and an independent environmental consulting agency. (Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.) Mayor Barnett signed the lease with Jordan on January 15, 2013. (Am Compl ¶9.)

The lease is for a term of five years with an option to renew for two additional years and covers 61.32 acres. In addition to paying the City of Rochester Hills $150 per leased acre as a cash bonus, Jordan agreed to pay the City of Rochester Hills 1/6 of the net amount realized by Jordan from the production of any oil and gas. Under the terms of the lease, Jordan may *not* enter, operate, or otherwise erect or maintain structures such as tanks on the surface. (See Am Compl Ex. A). Jordan also agreed not to hinder, interfere with, or otherwise adversely affect the use of the surface estate for parks and public recreation. (*Id.*) Jordan has not started any extraction or other operations. (Am Compl ¶15.) In the Amended Complaint, DDH claims that "West Bay has applied for a permit from MDEQ to drill in close proximity of the Cemetery." (Am Compl ¶15.) This statement is misleading. The permit is for a location in Macomb County, outside the City of Rochester Hills, outside Oakland County, and miles away from the actual

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Oil and Gas Exploration Project Summary," http://www.metroparks.com/Indian-Springs-Metropark-Oil-and-Gas-Exploration-Project-Summary.

[3] DDH alleges that the City Council actually approved a lease with "Jordan Management Company, LLC." (Am Compl ¶ 12.) DDH does not allege that there was some confusion or prejudice from this innocuous typographical error. This claim is only one example of a "red herring" allegation that populates DDH's Amended Complaint to distract from its deficiencies.

cemetery. West Bay's permit application for a drilling site in Macomb County does not affect DDH, the City of Rochester Hills, or even Oakland County.[4]

In addition to the lease with the City of Rochester Hills, Jordan has successfully negotiated over 400 private oil and gas subsurface leases with individual owners. (See Am Compl ¶ 16; Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.) According to Mayor Barnett, the lease with the City accounts only for 15% of the subsurface acreage Jordan has leased in Rochester Hills. The other 85% is private property leases. (Video: Jan 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.)

The Amended Complaint also alleges that the City's easement agreement with Sunoco regarding a pipeline in Bloomer Park violates the City Charter and the Home Rule Cities Act. (Am Compl ¶ 23, 24.) Jordan has nothing to do with Sunoco's activities in Bloomer Park. The amendment has nothing to do with Jordan.

Plaintiff DDH has a remote, if any, connection to Rochester Hills and to Oakland County. Plaintiff DDH was formed on April 24, 2014 in Port Huron more than 15 months after the City of Rochester Hills signed the lease with Jordan. (Articles of Incorporation, **Ex C**.) The press release lists a New Jersey area code phone number in the Philadelphia suburbs. **(Ex. A.)** DDH filed its initial Complaint against the City of Rochester Hills and Jordan on May 15, 2014. In an effort to further its political agenda (that was unsuccessful before the City Council and Mayor Barnett), DDH alleges the subsurface lease violates Section 11.8 of the City Charter and the Home Rule Cities Act, MCL 117.5(1)(e), and requests declaratory judgment to void the lease.

[4] "Oil and gas differ from other minerals. They do not constantly remain in the same place in the ground but can migrate across property lines." Cameron, *Michigan Real Property Law*, § 2.9, p 30. The cross-jurisdictional nature of oil and gas explains why the State of Michigan comprehensively regulates oil and gas drilling and extraction, rather than local governments.

STANDARD OF REVIEW

This Court should dismiss Plaintiff DDH's amended complaint because (1) DDH lacks standing to challenge a subsurface oil and gas lease that was approved by the City Council for city-owned property; and (2) the City of Rochester Hills did not violate the City Charter or the Home Rule Cities Act as a matter of law.

When ruling on a motion under MCR 2.116(C)(5), this Court must consider any affidavits, together with the pleadings, depositions, admissions, and documentary evidence then filed in the action or submitted by the parties. MCR 2.116(G)(5). MCR 2.116(C)(5) provides for summary disposition when the Plaintiff "lacks the legal capacity to sue"—such as where plaintiff lacks the requisite standing. *See Groves v Dept of Corr*, 295 Mich App 1; 811 NW2d 563 (2011) (granting summary disposition under MCR 2.116(C)(5) where plaintiff failed to allege cognizable injury or otherwise establish standing to challenge contract bidding process).

MCR 2.116(C)(8) permits summary disposition when "the opposing party has failed to state a claim on which relief can be granted." Only the pleadings may be considered for a motion under MCR 2.116(C)(8). MCR 2.116(G)(5). Such motions test the legal sufficiency of the plaintiff's claims to determine whether the allegations state a claim on which relief may be granted. *Spiek v Dep't ofTransp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Conclusory allegations are not sufficient and may be disregarded. *Alleghany Ludlum Corp v Dept of Treasury*, 207 Mich App 604, 605; 525 NW2d 512 (1994).

ARGUMENT

I. Michigan law requires plaintiff to allege an "actual controversy" for which declaratory judgment is necessary to guide the plaintiff's future conduct, a legal cause of action, or to allege a unique injury not shared by the citizenry at large. DDH's rights or future conduct are unaffected by the lease and it failed to allege a unique—or any—injury. Accordingly, DDH does not have standing.

DDH's amended complaint does not cure plaintiff's lack of standing. "Traditionally, a private citizen has no standing to vindicate a public wrong or enforce a public right where he is

not hurt in any manner differently than the citizenry at large." *Id. See, e. g., Inglis v Public School Employees Retirement Board*, 374 Mich 10, 131 NW2d 54 (1964). The Michigan Supreme Court held that a litigant has standing when (1) the litigant meets the requirements of MCR 2.605 for declaratory judgment; or (2) the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010) ("LSEA"). DDH however does not meet any of these criteria.

A. DDH does not allege an "actual controversy" because this Court's judgment is not necessary to guide future conduct to preserve legal rights.

DDH seeks declaratory judgment under MCR 2.605 (Am Compl ¶ 32) but does not meet the requirements of MCR 2.605. MCR 2.605(A)(1) provides that "[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." An "actual controversy" under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct to preserve legal rights. *UAW v Cent Michigan Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). The requirement of an "actual controversy" prevents a court from deciding hypothetical issues. *Id.* Further, the Court may only declare the rights of the parties "when circumstances render it useful and necessary; where it will service some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations." *Village of Breedsville v Columbia Twp*, 312 Mich 47, 54; 19 NW2d 482 (1945).

The real parties in interest are the parties to the lease—the Defendants. The City of Rochester Hills and Jordan do not allege a controversy or seek this Court to declare their legal rights or guide their future conduct under the lease. Rather, it is Plaintiff DDH, a third party, who asks this Court to declare "the rights of parties regarding below-surface activities in City-owned

parks," and poses seven hypotheticals for this Court to answer. (Am Compl ¶32.)[5] None of these allegations state an "actual controversy" because there is no "future conduct" to preserve DDH's legal rights. *UAW*, 295 Mich App at 495. DDH does not identify any "legal rights" that it has in the lease—it is neither a party nor a beneficiary of the contract between the defendants. DDH has no right to enforce the City Charter or the Home Rule Cities Act.

Instead of having this Court address a real injury, DDH asks this Court to overturn the City Council and the Mayor's finding that the lease between the City of Rochester Hills and Jordan is valid and in the best interest of the City of Rochester Hills. The lease contract has nothing to do with DDH, its members, or their rights. DDH has failed to demonstrate "an adverse interest necessitating the sharpening of the issues raised." *UAW*, 295 Mich App at 495. Plainly, DDH is attempting to use this Court to advance its political agenda, to second guess the City Council and the Mayor, and to adjudicate a non-justiciable issue. Accordingly, DDH has not alleged any "actual controversy," any future conduct that requires this Court's guidance to protect its legal rights, or any cognizable injury. DDH has no standing under MCR 2.605.

B. The City Charter and the Home Rule Cities Act do not provide a private cause of action. Thus, DDH does not allege a cause of action at law.

Neither the City Charter nor the Home Rule Cities Act, MCL 117.1 *et seq*, provides a private cause of action to non-profit corporations like DDH or their members. *See LSEA*, 487 Mich at 372. The amended complaint does not cite any provision of the City Charter or the Home Rule Cities Act showing "the Legislature intended to confer standing on the litigant." *Id.*

Indeed, Section 12.4 of the City Charter titled "Violation, punishment" offers the exclusive remedy: "*All* violations of this Charter or any ordinance shall be punishable, unless otherwise provided, by a fine not to exceed Five Hundred ($500.00) Dollars, or by imprisonment for a period not to exceed ninety (90) days, or both fine and imprisonment in the discretion of the

[5] The seven hypotheticals are variations of the same question: Whether the "City's execution of the Lease" violates Section 11.8 of the City Charter or the Home Rule Cities Act. DDH still has no standing to litigate this public and political question.

court, except that if the authority of the court is extended to levy a higher fine or impose a greater sentence, the court, in its discretion, may do so to the extent it is lawfully permitted under statute or ordinance." (emphasis added). The City of Rochester Hills limited the remedy available for violations of the Charter to the $500 fine and misdemeanor. This is the *sole remedy in the Charter* and excludes any right to private action, specific performance, or declaratory judgment.

C. DDH does not allege a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large.

DDH also does not have standing because it does not allege "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *LSEA*, 487 Mich at 372. In other words, a citizen has no standing to vindicate a public wrong or enforce a public right unless he is injured in some manner different from all the other citizens who share that same right. *Waterford Sch Dist v State Bd of Ed*, 98 Mich App 658, 662; 296 NW2d 328 (1980). DDH does not allege any unique injury or right. Rather, DDH seeks to enforce the public right of the "citizenry at large" to vote under the City Charter.

In paragraph 18, DDH attempts to create standing through its purported and unidentified "members." DDH alleges its "members" include:

> Former active participants and organizers of SPACE who were instrumental in having Section 11.8 of the Charter adopted; members who are registered voters in the City of Rochester Hills who were denied their right to vote on the lease; members who use the Parks; members who live within the units in which drilling is proposed; members who live in close proximity to the Parks; members who live in close proximity to and/or have family members buried in the Cemetery; members who live in close proximity to the well drilling sites proposed by Jordan; members who would be directly impacted by the noise, smells, increased traffic, potential spills, and other adverse environmental impacts caused by the proposed oil and gas exploration and production under the Lease (and the leases from other property owners within the proposed pooled units); members who live adjacent to lands that have been leased to Jordan and/or West Bay, members who have an ownership interest in their neighborhood Common Areas that have been leased against their will by their Homeowner's Associations; and members who own property whose value may be negatively impacted.

(Am Compl ¶ 18.)

None of these purported "members" have standing to challenge the lease with Jordan because they have suffered no injury. Even if they had, the "injury" is common to the citizenry at large. For example, any members who may have suffered injury as "voters" share an injury common to all citizens of Rochester Hills.[6] The other category of members, those whose property rights may be violated in some indefinite manner at some undefined point in the future, can allege nothing more than an amorphous and hypothetical harm.

Indeed, it is uncertain when, if, and to what extent Jordan will exercise its rights under the lease. DDH can only speculate what the impact of Jordan's activities, if any, will be, and any impact it may have on private property rights, if any. Additionally, the lease with the City of Rochester Hills is only a small fraction of property that Jordan has leased in the City—private leases account for a vast majority, 85%, of the leased property. (See Video: Jan. 27, 2014 City Council Meeting, Statement of Mayor Barnett, available at http://roch.legistar.com/.) A declaratory judgment that the lease with the City is void will not, as a practical matter, change any potential impact on other citizens' property rights. Under MCL 324.61525 the DEQ, and not the City of Rochester Hills, issues permits for any actual drilling or extraction activities. Rochester Hills is preempted from enacting any ordinance or other regulation that invades the State's jurisdiction over subsurface oil and gas extraction activities. The DEQ regulations already have "zoning" requirements for oil and gas wells intended to protect private property rights. For example, the supervisor shall not issue a permit where the "well is located within 450 feet of a residential building; [and] the residential building is located in a city or township with a population of 70,000 or more." R 324.61506b(1). A declaratory judgment must be useful or "serve some practical end." *Village of Breedsville*, 312 Mich at 54.

[6] Those who voted for Section 11.8 of the City Charter suffered no unique injury. The right to initiate amendments to the city charter and to vote on those amendments, or to have the City Council comply with the City Charter are all rights common to the public.

In sum, DDH asks this Court to decide a purely hypothetical dispute, with no actual or imminent injuries, and no rights asserted different than those from the citizenry at large. DDH does not meet the requirements of MCR 2.605. DDH does not have standing. Accordingly, this Court should grant summary disposition under MCR 2.116(C)(5) and dismiss the Complaint.

II. Michigan law favors natural resource recovery and the Legislature enforces this policy through comprehensive regulation. The Legislature preempts local government regulation and granted the supervisor of wells power to force pool interests into drilling units.

A. The City of Rochester Hills is preempted by State law from regulating oil and gas drilling.

DDH does not have standing to enforce the City Charter or the Home Rule Cities Act. Moreover, the State's comprehensive oil and gas regulatory scheme preempts local regulation of subsurface leases. Local governments may not enact regulations "if 1) the ordinance is in direct conflict with the state statutory scheme, or 2) if the state statutory scheme preempts the ordinance by occupying the field of regulation which the municipality seeks to enter, to the exclusion of the ordinance, *even where there is no direct conflict between the two schemes of regulation*." *People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977) (emphasis added). Rochester Hills is preempted from amending its City Charter to regulate or prohibit oil and gas drilling because the State occupies the field of oil and gas drilling regulation.

The Legislature granted exclusive powers to the supervisor of wells (the Director of the DEQ), "over the administration and enforcement of this part and *all matters* relating to the prevention of waste and to the conservation of oil and gas in this state. The supervisor also has jurisdiction and control of and over all persons and things necessary or proper to enforce effectively this part and *all matters* relating to the prevention of waste and the conservation of oil and gas." MCL 324.61505 (emphasis added). The Legislature granted the supervisor a number of police powers, including "to [enact regulations to] prevent fires or explosions," MCL 324.61506(f), "to regulate the mechanical, physical, and chemical treatment of wells," MCL

324.61506(h), and "to require the immediate suspension of drilling or other operations if there exists a threat to public health or safety," MCL 324.61506(q). R 324.506 prohibits flare stacks and surface facilities in residential areas. R 324.1016 requires surface facilities to comply with noise abatement standards to minimize any nuisance from the oil and gas extraction activities.

The DEQ also promulgated administrative rules that limit the role of cities in the oil and gas lease process. For example, R 324.61525 requires a permit before drilling any well for oil or gas, and requires the supervisor of wells to provide information about the applicant and the proposed well to the "city, village, or township in which the oil or gas well is proposed to be located." R 324.61525(4). The affected city may only "provide written comments and recommendations to the supervisor pertaining to applications for permits to drill and operate. The supervisor shall consider all such comments and recommendations in reviewing the application." *Id.* Further, the DEQ's administrative rules already have "zoning" requirements for oil and gas wells. For example, the supervisor shall not issue a permit where the proposed "well is located within 450 feet of a residential building; [and] the residential building is located in a city or township with a population of 70,000 or more." R 324.61506b(1).

Further, the State of Michigan regulates oil and gas drilling operations under State law, including local police power concerns, such as public health and safety. The DEQ state-level permit process protects individual citizens' property rights from adverse impacts of oil and gas exploration. Thus, Section 11.8 of the City Charter cannot apply to oil and gas leases because if it did, it would be preempted by the comprehensive state regulatory scheme.[7] *See People v Llewellyn*, 401 Mich 314, 322; 257 NW2d 902 (1977).

The Court may only declare the rights of the parties "when circumstances render it useful and necessary; where it will service some practical end." *Village of Breedsville*, 312 Mich at 54.

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[7] The comprehensive State regulatory scheme also explains why MCL 117.5 only restricts "sale" of city parks and cemeteries and makes no reference to leasing. The Legislature obviously recognized that cities were without the power to regulate oil and gas leasing, drilling, and extraction because they were preempted from doing so under the Natural Resources and Environmental Protection Act, and the DEQ's administrative rules.

However, the State determines whether or not oil and gas exploration takes place under the permitting process; further, the State may also force-pool oil and gas interests to promote natural resource development over the objections of property owners. A declaratory judgment against Rochester Hills or Jordan will not as a practical matter prevent oil and gas exploration in Rochester Hills or Oakland County.

B. Michigan's public policy is to maximize the recovery of the State's natural resources. The State enforces this policy through forced pooling of properties for oil and gas recovery. Plaintiffs seek a moot remedy because the State could order the pooling of properties and enable Jordan to recover the oil and gas underneath the city property.

If the City of Rochester Hills never approved the lease with Jordan, Jordan would be able to petition the state supervisor of wells to pool the leases that Jordan already has into 40 acre "drilling units." (See DEQ – Pooling of Properties for Oil and Gas Production, attached as **Ex D**.) Jordan is still able to access the oil and gas interests under the parks and cemeteries.

The State of Michigan encourages "the development of the industry along the most favorable conditions and with a view to the ultimate recovery of the maximum production of these natural products." MCL 324.61502. One of the ways the State effects this policy is through forced pooling of interests under MCL 324.61513. Jordan may petition the State supervisor of wells under MCL 324.61513(4) and obtain an order that the city park and cemetery subsurface estates be pooled with the surrounding Jordan-owned leases into a 40 acre drilling unit. The City of Rochester Hills receives only a 1/8 royalty interest, MCL 324.61718; R 324.1206, as opposed to the 1/6 that the City negotiated under the lease. The City would also be subject "terms and conditions that are just and reasonable" as imposed by the State supervisor of wells, and not those freely negotiated between Jordan and the City. MCL 324.61513(4).Through negotiating, the City received the better deal, a higher royalty percentage, and more control over Jordan's activities in the City of Rochester Hills.

III. The City Charter does not prohibit selling subsurface oil and gas interests where the surface estate retains its nature and character. The lease does not impact the surface, nature of the park, or the recreational uses of the park. Accordingly, the lease does not violate the City Charter.

DDH also failed to state a claim for relief because the City of Rochester Hills did not violate the City Charter when it approved the subsurface oil and gas lease with Jordan. Section 11.8 of the City Charter does not prohibit the City of Rochester Hills from leasing the subsurface oil and gas estate where the surface estate remains unaffected and suitable for public recreation and conservation purposes. DDH ignores the well-established difference between the surface estate and the subsurface mineral rights. *Rorke v Savoy Energy, LP*, 260 Mich App 251, 253; 677 NW2d 45 (2003). Nothing in the City Charter prohibits the city from leasing the subsurface mineral rights. The City still owns the parks and the parks are still available for all recreation and conservation uses that are protected under the City Charter.

DDH claims that the City Charter requires voters to approve subsurface mineral leases, but ignores the plain language of the voter-initiated amendment. The rules applicable to statutory construction apply construction of local laws as well. *Ballman v Borges*, 226 Mich App 166, 167; 572 NW2d 47 (Mich Ct App 1997). "The words of an initiative law are given their ordinary and customary meaning as would have been understood by the voters." *Welch Foods, Inc v Attorney General*, 213 Mich App 459, 461; 540 NW2d 693 (1995). The Court presumes "the Legislature intended the meaning plainly expressed in the statute." *Id.* This Court must avoid a construction that would render any part of a statute surplusage or nugatory, and "must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme." *People v Williams*, 268 Mich App 416, 425; 707 NW2d 624 (2005).

Section 11.8 of the Rochester Hills City Charter states:

> Parks and open spaces:
> City-owned parks and open spaces shall be used only for park and open space purposes and shall not be sold, leased, transferred, exchanged or converted to another use unless approved by a majority of votes cast by the electors at an election.

1. "Converted to another use" means changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation.

2. This section shall apply to all present and future City-owned property designated as park or open space in the City's Parks and Recreation Master Plan. The designation of parks or open space shall not be removed or changed without voter approval. The existing use of a park or open space on the effective date of this section shall be considered to be a lawful use for the particular property.

3. All land acquired by the City with proceeds from the 2005 Millage Proposal[8] to Provide Funding to Permanently Preserve Green Spaces and Natural Features within the City of Rochester Hills shall remain permanently preserved.

The City Council determined the subsurface oil and gas lease does not violate Section 11.8 of the City Charter. (Am Compl ¶ 12; See **Ex B**, Staran Legal Opinion.) Nothing in the Section 11.8 prohibits leasing subsurface mineral rights. Reading Section 11.8 as a whole and giving it the "meaning plainly expressed," it is clear the voters were concerned with only those property transfers that would interfere with their ability to use park land for recreation and conservation purposes. *Welch Foods*, 213 Mich App at 461. Tellingly, the voters defined "converted to another use" to mean "changing the use of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation." This means that not all "conversions"—and by extension sales and leases—are prohibited without a vote. For example, if the City decided to convert part of the park land to sell creek water to a bottled water manufacturer, it would not require a vote so long as it would not impact the citizens' ability to enjoy the park land, or be inconsistent with public recreation and conservation.

---

[8] The language of the 2005 Millage Proposal referenced in Section 11.8 further evidences the voters' intent was to preserve the environment and green spaces for public recreation and conservation. "Shall the City of Rochester Hills permanently preserve natural green spaces, wildlife habitats and scenic views; protect woodlands, wetlands, rivers and streams; and expand the Clinton River Greenway and other trail corridors by funding the purchase of land and interests in land….?" Nothing in the text of the proposal suggests that the voters intended to preclude uses that do not impact preservation of "natural green spaces, wildlife habitats and scenic views."

Similarly, here, the subsurface oil and gas lease has no impact on the public's ability and right to enjoy the park land. Nor does the lease interfere in any way with public recreation and conservation. Indeed, the lease is carefully crafted to avoid any adverse impact on the parks and any public recreation or conservation activities. For example, Paragraph 3 of Ex. A to the lease (Am Compl Ex A) prohibits Jordan from entering or operating on the surface estate. To the extent that DDH claims subsurface oil and gas extraction will impact public recreation and conservation, it is not the case. No reasonable public use of a park or open space contemplates subterranean activity that may occur thousands of feet below the ground. At best, DDH alleges a non-justiciable hypothetical injury. Such speculation is not sufficient to state a cause of action.

IV. The Home Rule Cities Act prohibits a city from selling a park or cemetery without voter approval. The City of Rochester Hills did not "sell" any part of a park or cemetery to Jordan. Rather, they leased to them oil and gas rights for a five year term.

DDH also claims that the City of Rochester Hills violated the Home Rule Cities Act. MCL 117.5(1)(e) prohibits a city "to *sell* a park, cemetery, or any part of a park or cemetery …unless approved by a majority of the electors voting on the question at a general or special election." (emphasis added). The contract between the City of Rochester Hills and Jordan is a bona-fide lease and not a sale. The lease is for a term of years, five years with a two year renewal option. (Am Compl Ex A.) The City of Rochester Hills continues to own the subsurface oil and gas estate subject to the exploration and extraction rights in the lease

Importantly, the Legislature did not include leases on the list of prohibited acts in MCL 117.5. The expression of one thing in a statute—"to sell"—means the exclusion of other similar things—such as "to lease." *See Alan v Wayne County*, 388 Mich 210, 253; 200 NW2d 628 (1970). Nothing in the text of the statute or the legislative history suggests that the Legislature intended "sale" to refer to subsurface oil and gas leases.

As a matter of state law, an oil and gas lease is a different transaction than a "sale" of land. A normal sale by deed conveys the surface together with the subsurface oil and gas

interests. *Stevens Mineral Co v State of Michigan*, 164 Mich App 692, 696; 418 NW2d 130 (1987). However, the owner of the estate may reserve or convey "less than a fee estate in the minerals." *Id.* Owners of mineral interests and those who have a mineral *lease* also have different access rights. The mineral *owner* has the right to come on the land and use the surface in a reasonable fashion to extract the minerals. *Erickson v Michigan Land & Iron Co*, 50 Mich 604, 16 NW 161 (1883). Jordan has no right to enter the surface estate under the terms of the lease with Rochester Hills, which is consistent with a true *lease*.

To further illustrate the difference, the process for *sale* of state owned land under MCL 324.2130 *et seq* is different from the oil and gas *leasing* process. MCL 324.2131 and MCL 324.2132 impose specific conditions on the sale of land that are not required when the DNR leases oil and mineral rights. For example, the land sold must be designated as "surplus" and meet one of three conditions: (1) The land has been dedicated for public use for not less than 5 years immediately preceding its sale and is not needed to meet a department objective; (2) the land is occupied for a private use through inadvertent trespass; or (3) the sale will promote the development of the forestry or forest products industry or the mineral extraction and utilization industry in this state. MCL 324.2131.

In contrast, the oil and gas lease process is governed by State administrative rules. Any party may nominate lands for oil and gas leases, R 299.8102(1), and the DNR will then recommend to the Natural Resources Commission whether to lease the land, R 299.8102(4). The lease is then offered at public auction, with the winning bidder agreeing to the terms of the standard Michigan oil and gas lease. R 299.8106. In short, Michigan law distinguishes between a sale and lease of the subsurface mineral interest. The City of Rochester Hills properly *leased* both the parks and the cemetery subsurface oil and gas rights. MCL 117.5 prohibits only a "sale"—and the City of Rochester Hills did not sell anything to Jordan. Accordingly, DDH failed to state a claim for the violation of the Home Rule Cities Act.

CONCLUSION AND RELIEF SOUGHT

DDH requests that this Court overrule the judgment of duly elected officials that the lease comports with the City Charter and Michigan law, but has not alleged an "actual controversy" and has no standing to challenge a contract between the City of Rochester Hills and Jordan Development. DDH also fails to state a claim. The City Charter does not prohibit the City from entering into a subsurface oil and gas lease that does not impact the surface estate or the recreational and conservation uses of the parks. And the Michigan Home Rule Act only applies to *sales* of land, not to bona-fide oil and gas leases. Summary disposition is proper under MCR 2.116(C)(5) and C(8). This Court should dismiss DDH's Complaint as a matter of law.

Respectfully submitted,

THE MIKE COX LAW FIRM PLLC

/s/ Danila V. Artaev (P74495)

Michael A. Cox (P43039)
Dan V. Artaev (P74495)
The Mike Cox Law Firm PLLC
17430 Laurel Park Drive North Suite 120 E
Livonia, MI 48152

Dated: July 16, 2014

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

v Hon. Judge Alexander

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,
and SUNOCO PIPELINE, L.P., a Texas limited partnership,

Defendants.
_____/

INDEX OF EXHIBITS

TITLE	**EXHIBIT**
Don't Drill the Hills Press Release	A
John Staran Legal Opinion	B
Don't Drill the Hills Articles of Incorporation	C
DEQ – Pooling of Properties for Oil and Gas Production	D

EXHIBIT

A

Contact: Gail Hammill
(856) 624-3344
info@dontdrillthehills.org
www.DontDrillTheHills.ORG
www.facebook.com/dontdrillthehills

FOR IMMEDIATE RELEASE
May 15, 2014

Don't Drill the Hills, Inc. files lawsuit against City of Rochester Hills for Charter Violation

Don't Drill the Hills, Inc. *(DDHI)*, is a non-profit, grassroots group of local citizens opposed to oil and gas drilling projects in their community. The group filed legal action today against the City of Rochester Hills for signing a lease for oil and gas exploration of City-owned park and cemetery properties. DDHI believes this violates the City's Charter, Michigan statute, and is a violation of public trust. The group seeks a declaratory ruling from the Court that the lease is void.

With the approval of Rochester Hills City Council, Mayor Bryan Barnett signed a lease with Jordan Development Company, LLC (Jordan) on January 15, 2013. The lease allows Jordan and West Bay Exploration Company to use horizontal drilling to explore for, extract, and sell oil/gas from Tienken Park, Nowicki Park and Stoney Creek Cemetery. Given the lease's swift passage, there are concerns the City did not perform proper investigatory due diligence.

At issue is a resident-driven 2011 City Charter Amendment. The amendment states that City-owned parks cannot be sold/leased or converted to a non-recreation or non-conservation use, *without approval* of the City's voters in an open election. The City Charter protects not just the surface of the park land in Rochester Hills, but the entire property, including its subsurface resources.

The lawsuit asserts that by signing a lease with Jordan, the Mayor and City Council:

- Violated the City Charter (Sec. 11.8).
- Violated Michigan law (MCL 117.5(e)) which requires voter approval for the sale of city parks and cemeteries designated as such in the City's Master Plan.
- Acted beyond the scope of their power, and took away the citizen's right to vote on the lease.

"We worked hard in a City-wide effort to amend the Charter in 2011 to protect our parks and ensure our beautiful city retains its residential character", said a DDHI Spokesperson Erin Howlett. "Rochester Hills voters saw the need for this added protection, initiated the Charter amendment, approved it overwhelmingly at the ballot box, and the City needs to honor it."

Since the city signed the lease, Jordan has targeted land owners and homeowner associations to lease their property's mineral rights. As local awareness has grown, residents have spoken out against horizontal drilling in dense residential areas with concerns over property rights, property values, environmental risks, tanker traffic, transparency in the process, and most importantly, the risks to the families that live in the *65 affected subdivisions* and attend the *8 schools* in the proposed drilling zone (along Tienken Road from Squirrel Road east to Stoney Creek High School).

The City's parks and natural resources need to be protected for future generations. This lawsuit strives to make that a reality. Jeannie Morris, DDHI Member notes: "Although the City proclaims its 'green' initiatives and environmental successes, the City's oil/gas lease is not in line with those values. We believe the Rochester Hills Council and Mayor Barnett have violated the City Charter, Michigan law, and the trust of residents."

###

Don't Drill the Hills, Inc. is a non-partisan grassroots nonprofit corporation that is building awareness of the risks of horizontal drilling in high-density residential and K-12 School areas. Concerns include: property rights, property values, mortgage and insurance complications, as well as potential environmental and health risks.

EXHIBIT B

HAFELI
STARAN
HALLAHAN
& CHRIST, P.C.
Attorneys at Law
4190 Telegraph Road, Suite 3000
Bloomfield Hills, Michigan 48302-2082

Main (248) 731-3080
Fax (248) 731-3081

John D. Staran
Direct (248) 731-3088
jstaran@hshclaw.com

November 20, 2012

VIA E-MAIL & U.S. MAIL

City Council
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

Re: ***Proposed Oil and Gas Lease***

Dear City Council:

The Rochester Hills City Council is considering a proposed Oil and Gas Lease requested by Jordan Development Company, LLC, of Traverse City, wherein Jordan, as the Lessee, would lease from the City the right to explore, extract and sell oil and gas that may be located beneath the surface of the City's Nowicki Park, Tienken Park and Stoney Creek Cemetery parcels, collectively comprising approximately 61 acres. These oil and gas rights will be part of a larger, pooled unit being assembled by Jordan. In consideration, the City will be paid a bonus of $150 per acre and will also receive royalties on the oil and gas produced and sold.

The City Council has asked for our written legal opinion whether the proposed Oil and Gas Lease may be authorized under the City Charter, as amended in 2011 to add Section 11.8 – Parks and Open Spaces, as follows:

> **Section 11.8 - Parks and Open Spaces**
>
> City-owned parks and open spaces *shall be used only for park and open space purposes and shall not be sold, leased, transferred, exchanged or converted to another use* unless approved by a majority of votes cast by the electors at an election.
>
> .1 "Converted to another use" means *changing the use* of a park or open space, or significant part thereof, from a recreation or conservation use to another use not directly related or incidental to public recreation or conservation.
>
> .2 This section shall apply to all present and future City-owned property designated as park or open space in the City's Parks and

> Recreation Master Plan. The designation of parks or open space shall not be removed or changed without voter approval. The existing use of a park or open space on the effective date of this section shall be considered to be a lawful use for the particular property.
>
> .3 All land acquired by the City with proceeds from the 2005 Millage Proposal to Provide Funding to Permanently Preserve Green Spaces and Natural Features within the City of Rochester Hills shall remain permanently preserved. [Emphasis added]

This charter amendment resulted from a citizen-driven initiative designed to require voter approval before the City may transfer or convert public parks and open space to non-recreational uses.

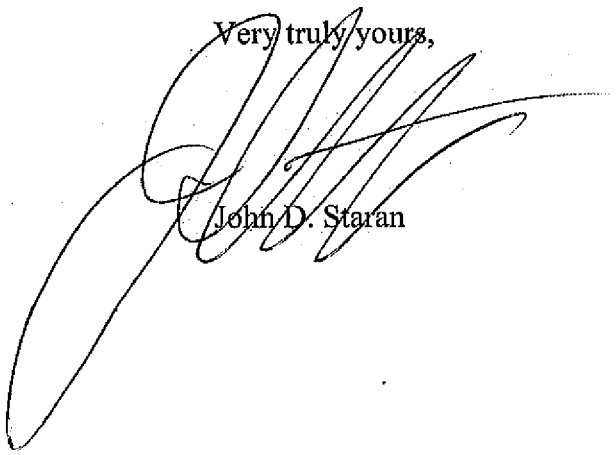
At the outset, it is important to understand the distinction between leasing the land and leasing the oil and gas rights. Those are two distinctly different things. Oil and gas rights may be sold or leased separately from the land itself, and that is what is being proposed here. Only the subsurface oil and gas rights are covered by the proposed lease. The City's surface estate will be unaffected, meaning the City's ownership, possession, use and control of the land, including the right to develop, occupy, use and/or preserve the land for park and open space (and cemetery) are unencumbered and unchanged by the proposed Oil and Gas Lease.

The form of lease presented is fairly standard and is modeled after the lease form used for State land. But, there are a number of important conditions that have been written into Exhibit A of the proposed lease to expressly provide that: (1) Lessee shall not utilize the hydraulic fracturing process (i.e., no "fracking"); (2) Lessee does not have the right to enter onto the property and may not conduct operations (including erection or construction of drills, wells, rigs, pipes, pumps, tanks, or other in-ground or above-ground structures, facilities or equipment) on the surface of the land without further approval of the City Council *and* compliance with applicable ordinance or charter requirements; (3) Lessee, through its operations, shall not disrupt, interfere with, restrict, drain, damage, destroy or remove any natural or man-made condition, feature or improvement located on the property; and (4) Lessee's operations shall not hinder, interfere with, restrict or otherwise adversely affect the current or future use and development of the land for parks, open space and public recreation without further approval of the City Council *and* compliance with applicable ordinance or charter requirements.

Consequently, because the proposed Oil and Gas Lease covers only subsurface oil and gas rights, does not allow the Lessee to enter onto, use or occupy the surface the land, does not restrict or interfere with the City's use, development or conservation of the land, does not transfer or alienate the City's ownership, use or control of the land, and does not convert any City park or open space to another use, I conclude, and reaffirm my prior verbal opinion, that Section 11.8 of the City Charter is not implicated and does not diminish the City Council's

lawful authority to consider and approve the proposed Oil and Gas Lease as presented.* Underpinning my opinion are the protective conditions written into the proposed Oil and Gas Lease which are designed to ensure the subject park and open space land will remain as such and will not be transferred, occupied or converted to another use.

Very truly yours,



John D. Staran

JDS/ijd
Enclosure

cc: Mayor Bryan K. Barnett

* If circumstances were different with Lessee proposing to enter onto, use, occupy or alter the surface of the land, Charter Section 11.8 may apply and require a referendum vote to authorize.

EXHIBIT C

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

FILING ENDORSEMENT

This is to Certify that the ARTICLES OF INCORPORATION - NONPROFIT

for

DON'T DRILL THE HILLS, INC.

ID NUMBER: 71548R

received by facsimile transmission on April 23, 2014 is hereby endorsed.

Filed on April 24, 2014 by the Administrator.

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 24th day of April, 2014.

Sent by Facsimile Transmission

Alan J. Schefke, Director
Corporations, Securities & Commercial Licensing Bureau

CSCL/CD-502 (Rev. 01/14)

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

Date Received

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

Name
Timothy J. Lozen

Address
511 Fort Street, Suite 402

City | State | ZIP Code
Port Huron, MI 48060

EFFECTIVE DATE:

Document will be returned to the name and address you enter above. If left blank, document will be returned to the registered office.

ARTICLES OF INCORPORATION
For use by Domestic Nonprofit Corporations
(Please read information and instructions on the last page)

Pursuant to the provisions of Act 162, Public Acts of 1982, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is:

Don't Drill the Hills, Inc.

ARTICLE II

The purpose or purposes for which the corporation is organized are:

Taking actions to oppose oil and gas drilling and leasing in and/or by the City of Rochester Hills and related actions.

ARTICLE III

1. The corporation is organized upon a Nonstock (Stock or Nonstock) basis.

2. If organized on a stock basis, the total number of shares which the corporation has authority to issue is _____. If the shares are, or are to be, divided into classes, the designation of each class, the number of shares in each class, and the relative rights, preferences and limitations of the shares of each class are as follows:

04/23/2014 11:06AM (GMT-04:00)

ARTICLE III (cont.)

3. a. If organized on a nonstock basis, the description and value of its real property assets are: (if none, insert "none")

None

b. The description and value of its personal property assets are: (if none, insert "none")

None

c. The corporation is to be financed under the following general plan:

Contributions by supporters of the corporation

d. The corporation is organized on a Directorship (Membership or Directorship) basis.

ARTICLE IV

1. The name of the resident agent at the registered office is:

Timothy J. Lozen

2. The address of its registered office in Michigan is:

511 Fort Street, Suite 402 (Street Address) Port Huron (City), Michigan 48060 (ZIP Code)

3. The mailing address of the registered office in Michigan if different than above:

(Street Address or PO Box) (City), Michigan (ZIP Code)

ARTICLE V

The name(s) and address(es) of the incorporator(s) is (are) as follows:

Name	Residence or Business Address
Timothy J. Lozen	511 Fort Street, Suite 402, Port Huron, MI 48060

Use space below for additional Articles or for continuation of previous Articles. Please identify any Article being continued or added. Attach additional pages if needed.

ARTICLE VI

No member of the board of directors of the corporation who is a volunteer director, as that term is defined in the Act, or a volunteer officer shall be personally liable to this corporation or its members for monetary damages for a breach of the director's or officer's fiduciary duty; provided, however, that this provision shall not eliminate or limit the liability of a director or officer for any of the following:

1. a breach of the director's or officer's duty of loyalty to the corporation;
2. acts or omissions not in good faith or that involve intentional misconduct or a kowing violation of law;
3. a violation of section 551(1) of the Act;
4. a transaction from which the director or officer derived an improper personal benefit
5. an act or omission occurring before the filing of these articles of incorporation; or
6. an act or omission that is grossly negligent.

If the Act is amended after the filing of these articles of incorporation to authorize the further elimination or limitation of the liability of directors or officers of nonprofit corporations, the liability of members of the board of directors or officers, in addition to that described in Article VI, shall be eliminated or limited to the fullest extent permitted by the Act as so amended. No amendment or repeal of Article VI shall apply to or have any effect on the liability or alleged liability of any member of the board of directors or officer of this corporation for or with respect to any acts or omissions occurring before the effective date of any such amendment or repeal.

ARTICLE VII

The corporation assumes the liability for all acts or omissions of a volunteer if all of the following conditions are met:

1. The volunteer was acting or reasonably believed he or she was acting within the scope of his or her authority.
2. The volunteer was acting in good faith.
3. The volunteer's conduct did not amount to gross negligence or willful and wanton misconduct.
4. The volunteer's conduct was not a tort arising out of the ownership, maintenance, or use of a motor vehicle for which tort liability may be imposed as provided in section 3135 of the Insurance Code of 1956, 1956 PA 218, MCL 500.135.

These Articles of Incorporation are signed by the incorporator on April _____, 2014.

I, (We), the incorporator(s) sign my (our) name(s) this 22nd day of April, 2014

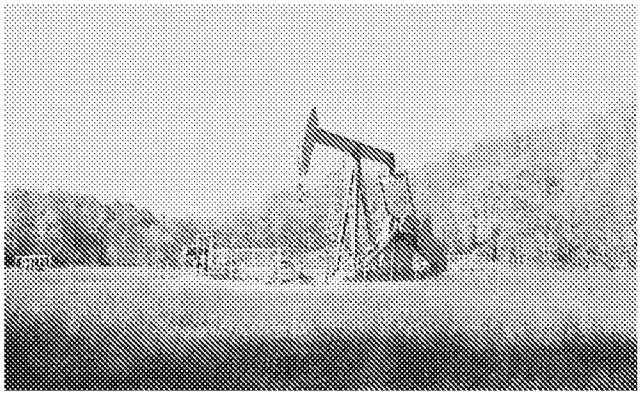
Timothy J. Joseph

EXHIBIT D

State of Michigan
DEQ
Department of Environmental Quality

POOLING OF PROPERTIES FOR OIL AND GAS PRODUCTION

Please note: This document is intended only to give a brief general description of oil and gas pooling, and is not to be construed as legal advice. If you are involved in a pooling matter, you may wish to contact an attorney.



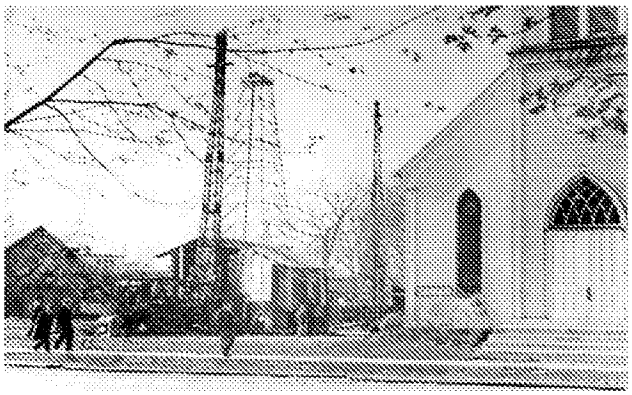
Typical Michigan Oil Well

In the early days of oil and gas production, developers often drilled as many wells as they could on the properties they owned or leased. Each developer was in competition with his or her neighbors and wanted to pump as much oil as possible, as quickly as possible. This often resulted in many more wells than were necessary and in waste of oil and gas resources.

Oil and gas producing states soon took action to address this and other wasteful practices in the oil and gas industry. Michigan enacted what is now Part 615 of the Natural Resources and Environmental Protection Act. Part 615 designates the Director of the Department of Environmental Quality as the "Supervisor of Wells," and charges the Department with providing for the orderly and efficient development of Michigan's oil and gas resources, while preventing damage to other resources, the environment, and public health and safety. Among other things, Part 615 provides for pooling of properties to form drilling units.

What is pooling?

Pooling is the combining of all oil and gas interests in a drilling unit. In most cases, the owners of oil and gas rights in a unit sign a lease with a developer that allows for pooling. If there is more than one developer in a unit, they voluntarily agree on a development plan. Each owner and developer receives his or her agreed upon share of proceeds from oil and gas produced from the unit. However, if an owner refuses to lease, or when two or more developers cannot agree on a plan, Part 615 provides for the Supervisor of Wells to pool the properties of those parties. This is termed "statutory pooling."



Early Oil Development, Bloomingdale

What is a drilling unit?

A drilling unit is a tract of land with a specified size and shape upon which one well may be drilled into a designated oil or gas reservoir. The purpose of drilling units is to set the optimum spacing and placement of wells, and to give each mineral owner a fair chance to benefit from development of oil and gas under his or her property.

Why is statutory pooling necessary?

The purpose of statutory pooling is to provide for equitable and efficient development of oil and gas while preventing the drilling of unnecessary wells.

Statutory pooling prevents the proliferation of wells that would occur if each owner of a separate small tract were allowed to drill a well on that tract. At the same time, it protects an owner from having his or her oil and gas drained without compensation.

How is statutory pooling done?

Statutory pooling can only be done by holding a hearing before the Supervisor of Wells. Any owner of a mineral interest in the area proposed to be pooled may participate in the hearing. Based on the hearing testimony, an order may be issued that sets the formula for sharing costs and revenues from a well or wells in the pooled area.

Who can be pooled?

Statutory pooling may affect the following persons:

Oil and gas developers who have leased mineral rights in the unit but do not voluntarily agree to share the costs of drilling and producing a well. The pooling order will set the terms for sharing of costs and revenues from the well. The developer may choose to pay in advance his or her share of costs of the well, or to have those costs deducted from his or her revenues. If the developer chooses the latter, he or she is not required to pay any out-of-pocket expenses. However, an additional cost (typically 100 to 300 percent of drilling costs) may be assessed against his or her revenue to compensate the driller for the risk of an uneconomic well.

Mineral owners who do not agree to lease. If pooled, a mineral owner will be subject to the same provisions for revenue sharing and choices for participation in costs as a developer, except that he or she will receive 1/8 of his or her revenue share as a cost-free royalty. The costs of drilling and production are deducted from the remaining 7/8 interest.

Mineral owners who have leased but do not consent to voluntarily pool their interests with others to form a full drilling unit. A pooling order may pool the interests of such an owner, but does not impose costs or affect his or her royalties.

Can a company drill a well or construct a pipeline on my land if I do not sign a lease and I am statutorily pooled?

A statutory pooling order does not give a developer the right to drill or otherwise trespass upon the land of an unleased owner. However, the developer may have certain rights of access under other legal provisions.

Department of Environmental Quality
Dan Wyant, Director
State of Michigan
Rick Snyder, Governor

Office of Oil, Gas, and Minerals
525 W. Allegan
P O Box 30256
Lansing MI 48909-7756
517- 241-1515
www.michigan.gov/ogs

Updated August, 2013

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 6TH JUDICIAL CIRCUIT
COUNTY OF OAKLAND

DON'T DRILL THE HILLS, INC.,
a Michigan nonprofit corporation,

Plaintiff, Case No. 2014-140827-CH

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CITY OF ROCHESTER HILLS,
a Michigan municipal corporation, and
JORDAN DEVELOPMENT COMPANY, LLC,
a Michigan limited liability company,

Defendants.
_____/

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NOTICE OF HEARING

TO: Clerk of the Court
1200 N. Telegraph Road
Pontiac, MI 48341

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PLEASE TAKE NOTICE THAT Defendant Jordan Development Company, LLC's MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(5) and MCR 2.116(C)(8) will be heard before the Honorable James M. Alexander on Wednesday, September 3, 2014, at 8:30 a.m. in Court Room 1B, located at the Oakland County Circuit Court,1200 N. Telegraph Road, Pontiac, MI 48341.

Respectfully submitted,

The Mike Cox Law Firm, PLLC

June 16, 2014

/s/ Dan V. Artaev
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CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2014, I electronically filed the foregoing paper with the Clerk of the Circuit Court for the County of Oakland, using the Tyler Technologies via Wiznet File & Serve system, which shall send notification of such filing to all counsel of record.

THE MIKE COX LAW FIRM PLLC

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