

**STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND AND WATER MANAGEMENT DIVISION**

**Michael Glynn
11904 Heritage Drive
Burr Ridge, IL 60527-7123**

**LWM 1118
File Number 08-64-0016-V**

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Michael Glynn and the Land and Water Management Division (LWMD), Michigan Department of Environmental of Quality (Department) (collectively, "the parties") and shall become effective on the date this Agreement is signed by Michael Glynn and the LWMD (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

RECITALS

By correspondence dated July 23, 2008, the LWMD issued a Notice of Violation (Notice) pursuant to Part 323, Shorelands Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended to Michael Glynn. The LWMD alleged within the Notice that Michael Glynn is responsible for certain residential construction activities including placing a roof over the lakeward facing deck, constructing the lowest floor such that it does not meet the Part 323 definition of a basement; and placement of a deck and screened area south of the house (Alleged Unauthorized Activities). The LWMD alleges that the construction activities are not in compliance with Department permit 06-64-0016-P (Permit) issued to Michael Glynn. The activities occurred on property known as 1823 Glen Road, Shelby located within T14N, R19W, Section 13, Oceana County, Michigan (Property);

The LWMD requested within the Notice (08-64-0016-V) that all Alleged Unauthorized Activities on the Property cease and desist and that the area affected by the Alleged Unauthorized Activities be restored;

The LWMD alleges that Michael Glynn owned or had control of the Property and performed the Alleged Unauthorized Activities without a Part 323 permit or not in compliance with the Permit.

Michael Glynn and the LWMD acknowledge that prior to the Alleged Unauthorized Activities occurring on the Property there existed a High Risk Erosion Area regulated by the State of Michigan under Part 323 and a Critical Dune area, that at the time of construction, regulated by Benona Township;

Michael Glynn, on September 4, 2008, in response to the Notice, submitted to the LWMD, supplemental project information. The LWMD in review of this additional information has agreed to process an after-the-fact permit application for certain activities.

The LWMD and Michael Glynn desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings; and

This Agreement identifies the necessary actions to be taken by Michael Glynn and the LWMD, and imposes certain conditions upon performance of these actions. Successful completion of the terms of this Agreement will, in the opinion of the LWMD, meet the statutory provisions of Part 323 and thereby resolve those allegations set forth in the Notice.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

COMPLIANCE AND IMPLEMENTATION SCHEDULE

SITE RESTORATION REQUIREMENTS

1. Michael Glynn, shall, restore the areas disturbed by construction on the Property. All disturbed areas shall be planted with native dune vegetation. Michael Glynn completed planting 98% of the disturbed areas September 1, 2008, the remaining 2% area to be completed by September 15, 2009.

LWMD PERMIT REQUIREMENTS

2. Michael Glynn shall, within 30 days of the Effective Date of this Agreement, provide to the LWMD a completed application for an after-the-fact permit and \$50.00 as the required Part 323 permit application fee. The completed after-the-fact permit application and fee shall be provided to the LWMD at the address provided within Paragraph 12 of this Agreement. The application plans shall identify the following activities:
 - The lowest floor as it is currently constructed.
 - The roof over the deck to the south of the house.
 - The roof over the deck to the west of the house.
3. The LWMD shall, within 30 days of the submittal of the after-the-fact application and fee, review the supplemental information and project plans submitted and notify Michael Glynn, in writing, of any additional information necessary to complete processing and review of the additional information.
4. Michael Glynn shall, within 15 days after receiving the LWMD's notice identified in Paragraph 5 of this Agreement, submit the information required by the LWMD.
5. The LWMD shall complete processing the application for permit with the additional information in accordance with the statutory requirements of Part 323.
6. If the LWMD determines that a permit can be issued, the LWMD shall issue the after-the-fact permit to Michael Glynn.
7. If the LWMD determines through review of the information that an after-the-fact permit cannot be issued to Michael Glynn, then this Agreement shall be deemed null and void. In such event, the LWMD reserves the right to pursue all available enforcement options as provided by law. Michael Glynn reserves the right to contest the denial of the application through the Department's administrative hearing process or as otherwise provided by law.

REPORTING AND MONITORING REQUIREMENTS

8. Michael Glynn shall be responsible for monitoring the restoration area for a period of one (1) year following completion of the planting work. At any time prior to the transfer of any interest in the property, Michael Glynn may request evaluation and certification of the restoration work from the LWMD. Such review and certification shall not be unreasonably withheld.
9. Subject to Paragraph 10 of this Agreement, should the vegetative restoration fail to become re-established as a natural dune as designed after one (1) complete growing seasons, or it fails to demonstrate satisfactory progress towards a stabilized system as designed, Michael Glynn shall:
 - A. Assess the problem(s) and identify the probable causes;
 - B. Develop reasonable and necessary corrective measures as a revision to the original plan;
 - C. Reasonable and necessary corrective measures may include, but are not limited to, reseeding and/or replanting of appropriate native dune plants;
 - D. Submit a copy of the proposed corrective measures to the LWMD for review;
 - E. Upon the LWMD approval, immediately implement the corrective measures.
10. All notices, applications, reports, and any other submittals required to be provided by Michael Glynn to the LWMD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Michelle Hohn
Michigan Department of Environmental Quality
Land and Water Management Division
350 Ottawa Avenue N.W.
Grand Rapids, MI 49503

GENERAL PROVISIONS

11. **PROPERTY ACCESS:** The LWMD staff shall have access to the Property to inspect and determine compliance with this Agreement. The LWMD shall provide a minimum of a 24 hour advance notice to Michael Glynn prior to inspection of the Property.
12. **SETTLEMENT PENALTY PAYMENT:** Michael Glynn agrees to pay an administrative settlement amount of \$4,500.00 (four thousand, five hundred dollars) to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of the effective date of this Agreement. Payment is to be made by certified check payable to the "State of Michigan". To insure proper credit, the payment made pursuant to this Agreement must include "Payment Identification: LWM 1118. This payment shall be sent to:

Michigan Department of Environmental Quality
OFM Revenue Control
P.O. Box 30657
Lansing, Michigan 48909-8157

13. **STIPULATED PENALTIES:** Michael Glynn shall pay stipulated penalties of One Hundred and Fifty (\$150.00) Dollars per day for failure to comply with the provisions of Paragraphs 1 through 14 of this Agreement. Michael Glynn upon receipt of a notice of any violation governed by this provision shall have a ten (10) day right to cure the violation before the imposition of any penalty under this provision.
14. **STIPULATED PENALTY PAYMENT:** To insure timely payments of any stipulated penalties provided in Paragraph 14 of this Agreement, Michael Glynn shall pay an interest penalty to the State of Michigan for failure to make a timely payment. This interest penalty shall be based upon a rate of 12 percent per year compounded annually, using the full increment of amount due as principal, and calculated from the due date for the payment until the delinquent payment is finally paid in full. All payments associated with this Paragraph 16 shall be paid in the form of a cashiers check payable to the "State of Michigan", and sent to:

Michigan Department of Environmental Quality
OFM Revenue Control
P.O. Box 30657
Lansing, Michigan 48909-8157
15. **PENALTY PAYMENT DISPUTE:** Michael Glynn agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 15 of this Agreement, but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by the LWMD of stipulated fines is made. Michael Glynn and the LWMD agree this does not preclude the possibility of informal resolution of disputed issues directly between Michael Glynn and the LWMD.
16. **RESOLUTION OF LWMD VIOLATION NOTICE:** As part of the successful completion of the terms of this Agreement, the LWMD shall deem resolved the July 23, 2008 Notice and close the LWMD complaint number 08-64-0016-V.
17. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Michael Glynn shall not conduct any activity within regulated Dunes except as provided by this Agreement, or as authorized by separate permit issued by the LWMD. This Agreement does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
18. **FORCE MAJEURE:** Michael Glynn shall perform the requirements of this Agreement within the time limits established herein, unless performance is prevented or delayed by events, which constitute a "Force Majeure" event. For the purpose of this Agreement, "Force Majeure" means an occurrence or non-occurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Michael Glynn, such as an "Act of God", untimely review of permit applications or submissions by the LWMD or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by Michael Glynn's due diligence, and that delay the performance of an obligation under this Agreement. "Force Majeure" does not include, among other things, unanticipated or increased costs, failure to secure funding, change in financial circumstances, or failure to obtain a permit or license as a result of Michael Glynn's actions or omissions.

19. **FORCE MAJEURE NOTICE:** Michael Glynn shall notify the LWMD by telephone within 48 hours of discovering any event, which causes delay in their compliance with any provision of this Agreement. Verbal notice shall be followed by written notice within ten calendar days, and shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Michael Glynn to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Michael Glynn to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.
20. **ASSIGNMENT OF RIGHTS:** This Agreement shall be binding on the parties, their officers, servants and employees. In the event that Michael Glynn sells or transfers any interest in this Property, Michael Glynn shall retain the obligation to perform any uncompleted work required by this Agreement before transfer of title.
21. **AGREEMENT AMENDMENTS:** This Agreement may be amended or revoked at any time by a written agreement executed by all parties to this Agreement. No change or modification to the Agreement shall be valid unless in writing and signed by all parties to this Agreement.
22. **DISPUTE RESOLUTION:** Both Parties agree to diligently and in good faith pursue informal negotiations to resolve any disputes arising out of this Agreement prior to resorting to judicial enforcement. Such negotiations shall proceed in a timely manner.
23. **DENIAL OF LIABILITY:** Nothing contained in this Consent Agreement shall be construed as an admission of liability or wrong doing by Michael Glynn. The LWMD and Michael Glynn agree that the signing of this Agreement is for settlement purposes only.
24. **AGREEMENT PROVISIONS:** The invalidity or unenforceability of any particular portion of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if invalid or unenforceable provisions were omitted.
25. **GOVERNING LAW:** This Agreement shall be executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
26. **TERMINATION OF AGREEMENT:** This Agreement shall remain in full force for a period of at least one (1) complete growing seasons following completion of the planting work for the Restoration Area as described in Paragraph 1 of this Agreement. This Agreement may remain in full force for an unspecified time period contingent upon successful completion of all requirements of this Agreement. This Agreement shall terminate only upon written notice of termination issued by the LWMD Chief. Prior to issuance of a written notice of termination, Michael Glynn shall submit a request consisting of a written certification that Michael Glynn has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.
27. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement among the parties hereto and contains all of the agreements among said parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date first above written. The undersigned certify they are fully authorized by the party they represent, to enter into this Consent Agreement and to legally bind that party to this Agreement.

Michael Glynn,

By: Michael Glynn Date: 09-07-09
Michael Glynn

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
LAND AND WATER MANAGEMENT DIVISION**

By: Elizabeth M. Browne Date: 9/21/09
Elizabeth M. Browne, Chief
Land and Water Management Division

Approved as to form:

By: Robert P. Reichel Date: 9-21-09
Robert P. Reichel
Assistant Attorney General
Environment, Natural Resources and Agriculture Division
Department of Attorney General