

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

**Brookside Farms  
37404 CR 388  
Gobles, Michigan 49055**

**LWMD: LWM 1112**

**File Number: 07-80-0032-V**

**CONSENT AGREEMENT**

This Consent Agreement (Agreement) is entered into by and between Brookside Farms (a general partnership between William Fritz and George Fritz) and the Land and Water Management Division (LWMD), Michigan Department of Environmental Quality (Department) and shall become effective on the date this Agreement is signed by Brookside Farms and the LWMD, whichever is later (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

**RECITALS**

By correspondence dated September 2, 2008, the LWMD issued a Notice of Violation (Notice) pursuant to Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended to Brookside Farms. The LWMD alleged within the Notice that Brookside Farms had cleared approximately 23 acres of land characterized by a mosaic of wetland and upland forest communities of which approximately 9.0 acres was estimated to be forested wetland regulated under the authority of Part 303. Trees and shrubs, including stumps and roots, were removed to prepare the land for planting and cultivating commercial blueberry shrubs. Spoil piles consisting of stumps, roots, woody debris, with attached soil materials and ground wood chips, were placed for disposal in approximately 0.7 acre of the cleared regulated wetland areas. Commercial blueberry shrubs were planted within approximately 14.5 acres of the cleared land, of which approximately 3 acres was estimated as regulated wetland areas (Blueberry Production Area). Site preparation also included installation of drain tiles and irrigation lines as a means to manipulate the site hydrology for the propagation of blueberries. The land clearing, spoil placement, planting of commercial blueberry shrubs and installation of the irrigation system (Alleged Unauthorized Activities) occurred on property located within Section 14 of Bloomingdale Township (T1S, R14W), Van Buren County as identified on Exhibit A (Property).

The LWMD requested within the Notice (File Number 07-80-0032-V) that all Alleged Unauthorized Activities on the Property cease and desist and that regulated wetland areas affected by the Alleged Unauthorized Activities be restored to pre-disturbance conditions.

Brookside Farms owned or had control of the Property and the LWMD claims performed the Alleged Unauthorized Activities without a permit under Part 303.

The LWMD and Brookside Farms desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings.

Brookside Farms and the LWMD have agreed that prior to undertaking the Alleged Unauthorized Activities there existed approximately 9.0 acres of forested wetlands (Regulated Wetland) regulated by the State of Michigan under Part 303 and intermixed with upland plant communities. Due to the sporadic distribution of the majority of wetland and upland plant communities that existed on the Property prior to the Alleged Unauthorized Activities, Brookside Farms and the LWMD agree that it would be difficult to restore all prior existing forested wetlands to the conditions and locations that existed prior to the Alleged Unauthorized Activities.

This Agreement identifies the necessary actions to be taken by Brookside Farms 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 303, 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. Within 30 days of the Effective Date of this Agreement, Brookside Farms shall submit to the LWMD plans to restore 6.0 acres of wetlands (Wetland Restoration Area) on the Property to the wetland conditions that had existed prior to the Alleged Unauthorized Activities. The Wetland Restoration Area is shown on Exhibit A. The plans shall include a site plan with existing and proposed ground surface elevations, plans to restore hydrology, a wetland vegetation planting plan, and work schedule for completion of the restoration activities within the Wetland Restoration Area. The planting plan must include a description of the manner for which native wetland tree and shrub species will be re-established within the Wetland Restoration Area. Brookside Farms shall not initiate construction activities until the LWMD has provided final approval or modification of the wetland restoration plans and approval of the work schedule.
2. Within 15 days of receipt of the restoration planting plans and work schedule identified in Paragraph 1, the LWMD shall provide to Brookside Farms written approval and/or revisions to the proposed plans and work schedule.
3. Brookside Farms shall complete restoration of the 6.0 acre Wetland Restoration Area by September 30, 2010. Within 15 days of completion of the wetland restoration, Brookside Farms shall provide to the LWMD written notification of completion of the wetland restoration activities.
4. Brookside Farms shall be responsible for monitoring the Wetland Restoration Area annually during the growing season for a period of three (3) years following completion of the planting and wetland restoration work. An experienced wetland consultant shall conduct the monitoring and shall provide an annual report assessing the development of the Wetland Restoration Area. The annual report shall be provided to the LWMD by no later than December 31 of each year with the first report due by December 31, 2010. Each annual monitoring report shall be prepared in accordance with the requirements found in Exhibit B.

#### **LWMD PERMIT REQUIREMENTS**

5. Brookside Farms shall, within 90 days of the Effective Date of this Agreement, provide to the LWMD an After-the-Fact Permit Application (ATF), the ATF application fee (\$1,000), a site plan for the Property, and a description of activities that have occurred within the 3.0 acre regulated wetland area impacted by the Alleged Unauthorized Activities and identified as the Blueberry Production Area on Exhibit A.
6. Brookside Farms shall submit with the ATF application a conservation easement (Attached as Exhibit C) depicting a 105.5 acre Conservation Area on the Property of which approximately 53 acres is considered forested wetland, confirmed by LWMD, and necessary

to meet the Part 303 wetland mitigation requirements for permit application processing. Brookside Farms shall submit along with the draft conservation easement the Forest Management Plan dated May 9, 2009 prepared by Mark P. Janke, a State of Michigan certified forester that specifies in detail the extent of timber harvest and management activities to be allowed within the Conservation Easement Area. The management areas identified as wetland are to remain in a natural state as preservation areas. The Forest Management Plan designates certain areas for specific timber management, but limits the forest management activities within the conservation easement to specific low impact activities that only allow for the harvest of designated tree species. Except for the limited activities specified within the forest management plan, the conservation easement area will remain in a natural unaltered state.

7. Within 30 days of the submittal of the ATF application, application information and site plans, the wetland mitigation proposal and ATF fee, the LWMD shall review the information submitted and notify Brookside Farms, in writing, of any additional information necessary to complete the processing of the ATF application.
8. Within 30 days after receiving the LWMD's notice identified in Paragraph 7 of this Agreement, Brookside Farms shall submit the information required by the LWMD to complete the ATF application.
9. The LWMD shall complete processing of the ATF application in accordance with the statutory requirements of Part 303.
10. If the LWMD determines that an ATF permit can be issued, the LWMD shall issue the permit to Brookside Farms.
11. Should LWMD issue the ATF permit, Brookside Farms shall, as a condition of acceptance of the permit, provide to the LWMD, within 60 days of issuance of the ATF permit, an executed conservation easement, in favor of the Department, that limits the use of the 3.0 acre Blueberry Production Area to the production of agricultural crops. Said conservation easement is attached as Exhibit D.
12. Within 60 days of issuance of the ATF permit, Brookside Farms shall provide to the LWMD an executed conservation easement document that provides for the preservation of the approximately 105.5 acre Conservation Area (Attached as Exhibit C). The 6.0 acre Wetland Restoration Area described in Paragraph 1 shall also be included within this conservation easement to be protected in a natural state or preservation. .
13. Brookside Farms shall provide legal descriptions for the 105.5 acre Conservation Area that is to be included within the conservation easement identified in Paragraphs 12 and for the 3.0 acre Blueberry Production Area described in Paragraph 11.
14. If the LWMD determines through the ATF application review process that an ATF permit cannot be issued to Brookside Farms, 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. Brookside Farms reserves the right to contest the denial of the ATF application through the Department's administrative hearing process or as otherwise provided by law.

### **REPORTING AND MONITORING REQUIREMENTS**

15. Should the Wetland Restoration Area fail to become established as a wetland community as designed after two (2) complete growing seasons, or should the Wetland Restoration Area fail to demonstrate satisfactory progress towards a self-sustaining forested wetland system as designed, Brookside Farms 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, regrading soils to improve hydrology, reseeding and/or replanting of wetland 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.
16. All notices, applications, reports, and any other submittals required to be provided by Brookside Farms to the LWMD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Charles Dodgers  
Michigan Department of Environmental Quality  
Land and Water Management Division  
350 Ottawa NW  
Grand Rapids, Michigan 49503

### **GENERAL PROVISIONS**

17. **PROPERTY ACCESS:** 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 Brookside Farms prior to inspection of the Property.
18. **SETTLEMENT PENALTY PAYMENT:** Brookside Farms agrees to pay an administrative settlement amount of \$2,500 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: LWMD LWM 1112. This payment shall be sent to:

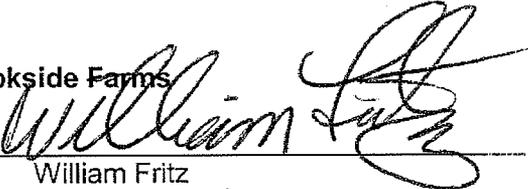
Michigan Department of Environmental Quality - OFM  
Revenue Control  
P.O. Box 30657  
Lansing, Michigan 48909-8157

19. **STIPULATED PENALTIES:** Brookside Farms shall pay stipulated penalties of One Hundred (\$100.00) Dollars per day for failure to comply with the provisions of Paragraphs 1 through 18 of this Agreement. Brookside Farms 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.

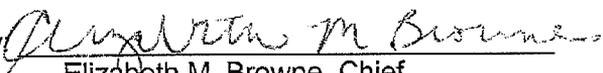
20. **STIPULATED PENALTY PAYMENT**: To insure timely payments of any stipulated penalties provided in Paragraph 19 of this Agreement, Brookside Farms shall pay an interest penalty to the State of Michigan for failure to make a timely payment. This interest penalty shall be based upon a rate of 12 percent 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 20 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
21. **PENALTY PAYMENT DISPUTE**: Brookside Farms agrees not to contest the legal basis for the penalty assessed pursuant to Paragraph 18 of this Agreement. Brookside Farms also agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 19 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. Brookside Farms and the LWMD agree this does not preclude the possibility of informal resolution of disputed issues directly between Brookside Farms and the LWMD.
22. **RESOLUTION OF LWMD VIOLATION NOTICE**: As part of the successful completion of the terms of this Agreement, the LWMD shall deem resolved the September 2, 2008 Notice and close the File Number 07-80-0032-V.
23. **OTHER PERMIT REQUIREMENTS**: With respect to the Property, Brookside Farms shall not conduct any activity within regulated wetlands 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.
24. **FORCE MAJEURE**: Brookside Farms 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, Brookside Farms, 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 Brookside Farms' 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 Brookside Farms' actions or omissions.
25. **FORCE MAJEURE NOTICE**: Brookside Farms 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 Brookside Farms to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Brookside Farms to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.

26. **ASSIGNMENT OF RIGHTS**: This Agreement shall be binding on the parties, their officers, servants and employees. In the event that Brookside Farms sells or transfers any interest in this Property, Brookside Farms shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Brookside Farms to complete the work required by this Agreement and comply with work to allowed by the ATF permit.
27. **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.
28. **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.
29. **DENIAL OF LIABILITY**: Nothing contained in this Consent Agreement shall be construed as an admission of liability or wrong doing by Brookside Farms. The LWMD and Brookside Farms agree that the signing of this Agreement is for settlement purposes only.
30. **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.
31. **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.
32. **TERMINATION OF AGREEMENT**: This Agreement shall remain in full force for a period of at least 5 (five) complete growing seasons following completion of the planting work for the Wetland Restoration Area as described in Paragraphs 1 and 4 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, Brookside Farms shall submit a request consisting of a written certification that Brookside Farms has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.
33. **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.

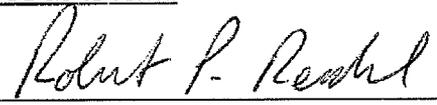
**IN WITNESS WHEREOF**, the parties hereto make and execute this Agreement on the date first above written. The undersigned certify they are fully authorized by the party they represent, to enter into this Consent Agreement and to legally bind that party to this Agreement.

Brookside Farms  
By:  Date: 1-15-2010  
William Fritz  
By:  Date: 1-15-2010  
George Fritz

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

By:  Date: 2/1/10  
Elizabeth M. Browne, Chief  
Land and Water Management Division

Approved as to form:

By:  Date: 1-25-2010  
Robert P. Reichel  
Assistant Attorney General  
Environment, Natural Resources and  
Agriculture Division  
Department of Attorney General

**List of Exhibits**

- Exhibit A:** Property Location Map, Wetland Restoration Area (6.0 acres), Blueberry Production Area (3.0 acres).
- Exhibit B:** Wetland Restoration Annual Monitoring Report Requirements.
- Exhibit C:** LWMD Conservation Easement Agreement Form (Conservation Area).
- Exhibit D:** LWMD Conservation Easement Agreement Form (Ag, Use Area).

## EXHIBIT B

### WETLAND RESTORATION REPORT REQUIREMENTS

The permittee shall monitor the wetland restoration for a minimum of 5 years. A monitoring report, which compiles and summarizes all data collected during the monitoring period, shall be submitted annually by Brookside Farms. Brookside Farms shall conduct the following activities and provide the information collected in the monitoring reports:

- a. Measure inundation and saturation at all staff gauges, monitoring wells, and other stationary points shown in the restoration plan monthly during the growing season. Hydrology data shall be measured and provided at sufficient sample points to accurately depict the water regime of each wetland type.
- b. Sample vegetation in plots located along transects shown in the restoration plan once between July 15 and August 31. The number of sample plots necessary within each wetland type shall be determined by use of a species-area curve or other approach approved by the LWMD. The minimum number of sample plots for each wetland type shall be no fewer than five (5). Sample plots shall be located on the sample transect at evenly spaced intervals or by another approach acceptable to the LWMD. If additional or alternative sample transects are needed to sufficiently evaluate each wetland type, they must be approved in advance in writing by the LWMD.

The herbaceous layer (all non-woody plants and woody plants less than 3.2 feet in height) shall be sampled using a 3.28 foot by 3.28 foot (one square meter) sample plot. The shrub and tree layer shall be sampled using a 30-foot radius sample plot. The data recorded for each herbaceous layer sample plot shall include a list of all living plant species, and an estimate of percent cover in 5 percent intervals for each species recorded, bare soil areas, and open water relative to the total area of the plot. The number and species of surviving, established, and free-to-grow trees and surviving, established, and free-to-grow shrubs shall be recorded for each 30-foot radius plot.

Provide plot data and a list of all the plant species identified in the plots and otherwise observed during monitoring. Data for each plant species must include common name, scientific name, wetland indicator category from the U.S. Fish and Wildlife Service's "National List of Plant Species That Occur in Wetlands" for Region 3, and whether the species is considered native according to the Michigan Floristic Quality Assessment (Michigan Department of Natural Resources, 2001). Nomenclature shall follow Voss (1972, 1985, and 1996) or Gleason and Cronquist (1991).

The location of sample transects and plots shall be identified in the monitoring report on a plan view showing the location of wetland types. Sample transects shall be permanently staked at a frequency sufficient to locate the transect in the field.

- c. Delineate any extensive (greater than 0.01 acre in size) open water areas, bare soil areas, areas dominated by invasive species, and areas without a predominance of wetland vegetation, and provide their location on a plan view.

- d. Document any sightings or evidence of wading birds, songbirds, waterfowl, amphibians, reptiles, and other animal use (lodges, nests, tracks, scat, etc.) within the wetland noted during monitoring. Note the number, type, date, and hour of the sightings and evidence.
- e. Inspect the site, during all monitoring visits and inspections, for oil, grease, man-made debris, and all other contaminants and report findings. Rate (e.g., poor, fair, good, excellent) and describe the water clarity in the mitigation wetland.
- f. Provide annual photographic documentation of the development of the mitigation wetland during vegetation sampling from permanent photo stations located within the mitigation wetland. At a minimum, photo stations shall be located at both ends of each transect. Photos must be labeled with the location, date photographed, and direction.
- g. Provide one-time photographic documentation during construction of the placement of at least six (6) inches of high quality soil, from the A horizon of an organic or loamy surface texture soil, across the site.
- h. Provide the number and type of habitat structures placed and representative photographs of each structure type.
- i. Provide a written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring results. This summary shall include a calculation of the acres of each wetland type established, a plan view drawing depicting each ecological type, and identification of all performance standards and whether each standard has been met.
- j. Provide a written summary of all the problem areas that have been identified and potential corrective measures to address them.

A qualified individual able to identify vegetation to genus and species must conduct the wetland monitoring. The department reserves the right to reject reports with substandard monitoring data.

The LWMD will determine if the performance standards have been met. If the performance standards have not been met, the LWMD may require subsequent annual monitoring until final approval from the LWMD can be granted.



EXHIBIT C

AGREEMENT FOR  
CONSERVATION EASEMENT  
(FOREST)

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created \_\_\_\_\_, 20\_\_\_\_, by and between

\_\_\_\_\_ (name) married/single individual[s](circle one), or corporation, partnership, municipality, or limited liability company (circle one), whose address

is \_\_\_\_\_ (Grantor) and the Michigan Department of Environmental Quality (MDEQ), whose address is, Constitution Hall, 1<sup>st</sup> Floor South, P.O. Box 30458, Lansing, Michigan 48909-7958; or 525 West Allegan Street, Lansing, Michigan 48933 (Grantee);

The Grantor is the fee simple title holder of real property located in (circle one) the Township/City of \_\_\_\_\_ County, and State of Michigan, legally described in Exhibit A.

The MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and

Whereas, the Easement Premises can be described as a predominantly forested ecosystem, containing outstanding natural resource values, including wetlands, significant plant and wildlife habitat, and includes sizeable natural and undeveloped habitat of high quality that provides protection and buffer for wetlands, streams, and other water bodies contained within,

Whereas, Grantor reserves the right to use the Easement Premises for commercial forest management under the terms of this Agreement, and consistent with a DEQ approved Forest Stewardship Plan (Exhibit E).

Whereas, Grantor and the Grantee, agree that continued management of the Easement Premises as a commercial working forest, in a manner that protects the property primarily in its natural and undeveloped condition while providing a continued, renewable, and long-term source of forest products in accordance with best management practices to prevent erosion, sedimentation and degradation of soil and water resources, does not conflict with the conservation values of the Easement Premises,

Consistent with the Consent Agreement entered into on \_\_\_/\_\_\_/\_\_\_ to resolve DEQ file no. \_\_\_\_\_-V), Grantor agrees to convey this Conservation Easement that protects the wetland and integral habitat on the property and restricts further development to the area legally described in Exhibit B. Grantor also agrees to the DEQ approved Forest Stewardship Plan (Exhibit E), which together with the conservation easement, establishes a long-term agreement to ensure the permanent protection, management, and monitoring of the forested wetland and integral habitat and restricts further development to the area legally described in Exhibit B. The Conservation Easement (the Easement Premises) consists of approximately 105.5 acres. A survey map depicting the easement premises is attached as Exhibit C. The MDEQ shall record this Agreement with the county register of deeds.

ACCORDINGLY, Grantor hereby conveys unto the Grantee, forever and in perpetuity, this Conservation Easement as set forth in this Agreement pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

1. The purpose of this Agreement is to preserve and protect in perpetuity the functions and values of forested wetland and integral habitat and its natural resource values on the Easement Premises consistent with the Consent Agreement, and the protection of the benefits to the public derived from wetlands and integral habitat, by requiring Grantor to maintain the Easement Premises primarily in their natural and undeveloped condition, subject to select timber harvesting consistent with the attached DEQ approved forest management plan (Exhibit E).

2. Except as authorized under the Consent Agreement or as otherwise provided in this Agreement, Grantor shall refrain from, and prevent any other person from altering or developing the Easement Premises in any way. This includes, but is not limited to:

- a) Alteration of the surface topography;
- b) Creation of paths, trails, or roads;
- c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended;
- d) Dredging, removal, or excavation of any soil or minerals;
- e) Drainage of surface or groundwater;
- f) Construction or placement of any structure;
- g) Plowing, tilling, mowing or cultivating the soils or vegetation;
- h) Alteration or removal of vegetation, including the planting of non-native species;
- i) Ranching; grazing; farming;
- j) Use of chemical herbicides, pesticides, fungicides, fertilizer, spraying with biocides, larvicide's, or any other agent or chemical treatment, unless as part of a DEQ approved management plan;
- k) Construction of unauthorized utility or petroleum lines;
- l) Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids, or other waste materials, including accumulated vegetative debris such as grass clippings, leaves, yard waste, or other material collected and deposited from areas outside the Easement Premises;
- m) Use or storage of automobiles, trucks, or off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles;
- n) Placement of billboards or signs, except as otherwise allowed in the Consent Agreement or this Agreement;
- o) Use of the wetland for the dumping of untreated stormwater or the directing of treated stormwater to the easement premises at a volume that adversely impacts the hydrology of the wetland;
- p) Actions or uses detrimental or adverse to water conservation and purity and fish, wildlife or habitat preservation.

3. Forest Stewardship plan. The Grantor shall stay in compliance with a DEQ approved Forest Stewardship Plan, which shall remain reasonably current and is to be reviewed and amended as necessary, no less than every 10 years. The plan shall be prepared by a professional forester licensed to do business as a forester in the State of Michigan. Copies of plans shall be provided to the DEQ and shall include the following:

- a) Landowner's management objectives.
- b) A timber harvest that meets the owner's objectives and emphasizes wetland protection.
- c) Acreage affected.
- d) Topographic, aerial, soils, and forest cover maps.
- e) Site description should include existing vegetation data stocking, age, species, and site index, condition (insects and diseases).
- f) General inventory of the property, including any springs, seeps, and other wetland areas, rare and endangered species.
- g) Features: fences, roads, wells, power lines, trails, and structures.
- h) Minimum of 10 year of planned forested activities.

- i) Grantors signed agreement that all forest management activities will be conducted in accordance with Best Management practice guidelines prepared and accepted by Michigan Department of Natural Resources, which may be amended from time to time, or comparable provisions which may replace the guidelines in the future.
4. As used in this Agreement, forest management activities include the planting, growing, cutting, and harvesting of trees consistent with the objectives outlined within the DEQ approved Forest Management Plan and shall conform to Best Management practice guidelines prepared and accepted by Michigan Department of Natural Resources.
  - a. Harvesting of trees shall be conducted during drier times of the year or during times when the ground is frozen in order to minimize impacts to the soils and cause the least disruption to the easement area. Temporary skid trails are allowable under this agreement. Construction of forest roads is prohibited.
  - b. Understory plant materials, including, but not limited to, brush, shrubs, saplings, seedlings, undergrowth and vines shall not be cut down, removed or destroyed within the Easement Premises, as needed to control exotic or invasive species in connection with the Forest Stewardship Plan as approved by the Grantee.
  - c. New plantings may be installed within the Easement Premises if needed to supplement existing vegetation or to replace dead trees or other vegetation, provided such plantings are characteristic of native growth and have been approved by the Grantee. The DEQ approved Forest Management Plan for the easement area is intended to sustain native tree growth in a natural setting and is not intended to serve as a manipulated tree nursery or silvicultural operation.
5. Grantor is not required to restore the Easement Premises due to alterations resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable; natural causes; or natural disasters such as unintentional fires, floods, storms, or natural earth movement.
6. Grantor, or its authorized agents or representatives, may enter the Easement Premises to perform activities within the Easement Premises consistent with the Consent Agreement or the mitigation requirements. Grantor shall provide 5 days notice to the Grantee of undertaking any mitigation activity even if the mitigation project has been conceptually approved. Any activities undertaken pursuant to the Consent Agreement, a mitigation project, or this Agreement, shall be performed in a manner to minimize the adverse impacts to existing wetland or mitigation areas.
7. Grantor warrants that Grantor has good and sufficient title to the Easement Premises described in Exhibit B.
8. Grantor warrants that any other existing interests or encumbrances in the Easement Premises have been disclosed to the MDEQ.
9. Grantor warrants that to the best of Grantor's knowledge no hazardous substances or hazardous or toxic wastes have been generated, treated, stored, used, disposed of, or deposited in or on the property.
10. This Agreement does not grant or convey to Grantee or members of the public any right to possession or use of the Easement Premises.
11. Grantor shall continue to be responsible for the upkeep and maintenance of the Easement Premises to the extent it may be required by law.
12. Grantee and its authorized employees and agents as shown in Exhibit D, may enter the Easement Premises at reasonable times to determine whether the Easement Premises are being maintained in compliance with the terms of this Agreement, mitigation, or other conditions of the Consent Agreement; and for

the purpose of taking corrective action for failure to comply. If Grantee is entering the easement for purpose of taking corrective actions, Grantor shall be provided with 14 days notice to provide the opportunity to cure the failure to comply.

13. This Agreement shall be binding upon the successors and assigns of the parties shall run with the land in perpetuity unless modified or terminated by written agreement of the parties.

14. This Agreement may be modified only in writing through amendment of the Agreement. Any modification shall be consistent with the purpose and intent of the Agreement.

15. In addition to the right of the parties to enforce this Agreement, it is also enforceable by others against the owner of the land in accordance with Part 21, Subpart 11 of the NREPA, MCL 324.2140 *et seq.*, as amended.

16. Grantor shall indicate the existence of this Agreement on all future deeds, mortgages, land contracts, plats, and any other legal instrument used to convey an interest in the Easement Premises.

17. A delay in enforcement shall not be construed as a waiver of the Grantee's rights to enforce the conditions of this Agreement.

18. This Agreement shall be liberally construed in favor of maintaining the purpose of the Conservation Easement.

19. If any portion of this Agreement is determined to be invalid by a court of law, illegal, or unenforceable, the remaining provisions of this easement remain valid, binding and enforceable.

20. This Agreement will be construed in accordance with Michigan law. All legal action related to this conservation easement must be filed and pursued in Michigan state courts.

21. In addition to the terms of the Consent Agreement issued by Grantee, this document sets forth the entire agreement of the parties. It is intended to supersede all prior discussions, negotiations, or understandings or agreements.

22. Within 90 days after this Agreement is executed, Grantor shall place and maintain at Grantor's expense, signs, fences, or other suitable markings along the Easement Premises to clearly demarcate the boundary of the Easement Premises, or as otherwise provided in the Consent Agreement.

23. The terms "Grantors" and "Grantee" wherever used in this Agreement, and any pronouns used in place thereof, shall include, respectively, the above-name Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and their successors and assigns.

## LIST OF ATTACHED EXHIBITS

- Exhibit A:** A legal description of the Grantor's property, inclusive of the Easement Premises.
- Exhibit B:** A legal description of the Easement Premises.
- Exhibit C:** A survey map depicting the Easement Premises that also includes identifiable landmarks such as nearby roads to clearly identify the easement site.
- Exhibit D:** A legal description that provides a path of legal access to the Easement Premises and a map that indicates this access site that MDEQ staff will use for ingress and egress to and from the Easement Premises; or if the Easement is directly connected to a publicly accessible point, such as a public road, a statement is required that authorizes MDEQ staff ingress and egress to and from the Easement Premises with a map that clearly indicates the connection of the public access site to the Easement Premises.
- Exhibit E:** Forest Management Plan





EXHIBIT D

AGREEMENT FOR  
CONSERVATION EASEMENT  
(AGRICULTURE)

(This instrument is exempt from County and State transfer taxes pursuant to MCL 207.505(a) and MCL 207.526(a), respectively)

This CONSERVATION EASEMENT is created \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ (name) married/single individual [s] (circle one), or corporation, partnership, municipality, or limited liability company (circle one), whose address is \_\_\_\_\_ (Grantor) and the Michigan Department of Environmental Quality (MDEQ), whose address is, Constitution Hall, 1<sup>st</sup> Floor South, P.O. Box 30458, Lansing, Michigan 48909-7958; or 525 West Allegan Street, Lansing, Michigan 48933 (Grantee);

The Grantor is the fee simple title holder of real property located in (circle one) the Township/City of \_\_\_\_\_, \_\_\_\_\_ County, and State of Michigan, legally described in Exhibit A.

The MDEQ is the agency charged with administering Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), and

Permittee \_\_\_\_\_ (insert name of Permittee if other than Grantee) has applied for an After-the-Fact Permit (MDEQ File Number \_\_\_\_\_ - \_\_\_\_\_) pursuant to Part 303 to authorize activities that have impacted regulated wetland. The MDEQ evaluated the permit application and determined that a permit could be authorized for certain activities within regulated wetlands provided certain conditions are met, and

Whereas, the Property is classified as a farmed wetland and is currently being used for blueberry crop production, and

Whereas, farmed wetlands continue to perform valuable natural functions such as providing important waterfowl wintering, feeding, and nesting areas; nursery areas for fish and invertebrates; and may provide flood control and the filtration of pollutants, and

Whereas, farmed wetlands, when no longer farmed, will revert back to their natural and undeveloped wetland condition.

As a condition of the above- reference permit, Grantor (on behalf of Permittee, if applicable) has agreed to grant the MDEQ a Conservation Easement that allows agricultural blueberry crop production to take place, while protecting the wetland soils and eventual wetland restoration viability of the site. To the extent that blueberry farming activities shall occur, the Conservation Easement (the Easement Premises) shall prevent any other use or development of the property, or any other activity that will significantly impair or interfere with the wetland conservation values of the property. Grantor agrees to confine the use of the Easement Premises to the farming of blueberries consistent with the Permit \_\_\_/\_\_\_/\_\_\_ issued \_\_\_/\_\_\_/\_\_\_ until such time

that farming operations cease and the area under easement is allowed to convert back to its natural wetland condition.

Now, therefore, in consideration of the above and mutual covenants, terms, conditions, and restrictions contained in this document, and pursuant to the laws of Michigan, Grantor hereby grants and conveys to Grantee a conservation easement in perpetuity over the Easement Premises of the nature and character defined in this document and legally described in Exhibit B. The Conservation Easement consists of approximately \_\_\_\_\_ acres. A survey map depicting the easement premises is attached as Exhibit C. The MDEQ shall record this Agreement with the county register of deeds.

ACCORDINGLY, Grantor conveys this Conservation Easement to Grantee pursuant to Subpart 11 of Part 21, Conservation and Historic Preservation Easement, of the NREPA, MCL 324.2140 et seq., on the terms and conditions stated below.

1. It is the purpose of this easement that intends that the conservation values of the Easement Premises shall be preserved and maintained with the continuation of existing land use patterns, including those activities related to agricultural crop production that exist at the time of this conveyance, that do not significantly impair or interfere with remaining wetland values. Grantor agrees to confine use of the Easement Premises to existing farming activities associated with blueberry crop production with the condition that at any time that blueberry production ceases, the farmed wetlands within the Easement Premises shall be allowed to revert back to their natural wetland condition, and the Easement Premises, shall forever forward, be allowed to remain in their natural and undeveloped condition, and no further farming or crop production or conversion of the property to any other use shall be allowed.
2. Except as authorized under MDEQ Permit Number \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_ issued on \_\_\_\_/\_\_\_\_/20\_\_\_\_ or as otherwise provided in this Agreement, Grantor shall refrain from, and prevent any other person from altering or developing the Easement Premises in any way. This includes, but is not limited to:
  - a) Alteration of the surface topography;
  - b) Creation of paths, trails, or roads;
  - c) The placement of fill material as defined in Part 303 of the NREPA, MCL 324.30301 et seq., as amended;
  - d) Dredging, removal, or excavation of any soil or minerals;
  - e) Drainage of surface or groundwater;
  - f) Construction or placement of any structure;
  - g) Ranching; grazing;
  - h) Construction of unauthorized utility or petroleum lines;
  - i) Storage or disposal of ash, garbage, trash, debris, abandoned equipment or accumulation of machinery, bio-solids or other waste materials, including accumulated vegetative debris such as grass clippings, leaves, yard waste, or other material collected and deposited from areas outside the Easement Premises;
  - j) Use or storage of off-road vehicles including, but not limited to, snowmobiles, dune buggies, all-terrain vehicles, and motorcycles;
  - k) Placement of billboards or signage, except as otherwise allowed in the Permit or this Agreement,
  - l) Use of the wetland for the dumping of untreated stormwater at a volume that adversely impacts the hydrology of the wetland;
  - m) Actions or uses detrimental or adverse to water conservation and purity and fish, wildlife or habitat preservation.
3. At such time that agricultural blueberry crop production ceases within the Easement Premises, cutting down, destroying, or otherwise altering or removing trees, tree limbs, shrubs, or other vegetation, whether living or dead, is prohibited within the Easement Premises, except with the written permission of Grantee, expressly for the removal of trees or limbs to eliminate danger to health and safety; to reduce a threat of infestation posed by diseased vegetation; to control invasive non-native plant species that endanger the health of native species; or as otherwise provided in the MDEQ approved Management Plan for the Easement Premises.

4. Grantor is not required to restore the Easement Premises due to alterations resulting from causes beyond the owner's control, including, but not limited to, unauthorized actions by third parties that were not reasonably foreseeable; natural causes; or natural disasters such as unintentional fires, floods, storms, or natural earth movement.
5. Grantor warrants that Grantor has good and sufficient title to the Easement Premises described in Exhibit B.
6. Grantor warrants that any other existing interests or encumbrances in the Easement Premises have been disclosed to the MDEQ.
7. Grantor warrants that to the best of Grantor's knowledge no hazardous substances or hazardous or toxic wastes have been generated, treated, stored, used, disposed of, or deposited in or on the property.
8. This Agreement does not grant or convey to Grantee or members of the general public any right to possession or use of the Easement Premises.
9. Grantor shall continue to be responsible for the upkeep and maintenance of the Easement Premises, to the extent it may be required by law.
10. Grantee and its authorized employees and agents may enter the Easement Premises upon reasonable notice to Grantor to determine whether the Easement Premises are being maintained in compliance with the terms of this Agreement, mitigation, or other conditions of the Permit; and for the purpose of taking corrective actions for failure to comply. If Grantee is entering the easement premises for purposes of taking corrective actions, Grantor shall be provided with 14 days notice to provide the opportunity to cure the failure to comply.
11. This Agreement shall be binding upon the successors and assigns of the parties shall run with the land in perpetuity unless modified or terminated by written agreement of the parties.
12. This Agreement may be modified only in writing through amendment of the Agreement. Any modification shall be consistent with the purpose and intent of the Agreement.
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