

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

**Tamarack Development Associates, LLC
2035 US 31 N
Traverse City, Michigan 49686**

LWMD: LWM 1116

File Number: 07-28-0019-V

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Tamarack Development Associates, LLC 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 Tamarack Development Associates, LLC 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 October 1, 2007, the Department issued a Notice of Violation (Notice) pursuant to Part 303, Wetlands Protection and Part 325 Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended to Tamarack Development Associates. The Department alleged within the Notice that Tamarack Development Associates dredged sand and other material within regulated wetlands below the Ordinary High Water Mark on exposed bottomland of Lake Michigan and dredged, filled and outside of areas previously authorized by Department permit (Alleged Unauthorized Activities). The Department alleged these activities occurred on Tamarack Development Associates property located at 2035 US 31 North, Traverse City, Michigan (Property);

The Department requested within the Notice (07-28-0019-V) that all Alleged Unauthorized Activities on the Property cease and desist and for Tamarack Development Associates to submit a plan to restore and/or mitigate the area affected by the Alleged Unauthorized Activities;

Tamarack Development Associates, LLC owned or had control of the Property when the Alleged Unauthorized Activities occurred;

The LWMD alleges that prior to construction and development activities occurring on the Property, there existed approximately 3.7 acres of wetlands regulated (Regulated Wetland) by the State of Michigan under Part 303. On January 9, 2004, the DEQ issued a permit to Waterfront Inn Resort Hotel for beach maintenance activities (DEQ Permit Number 03-28-0051-P), The permit expired on June 5, 2006. The LWMD alleges that the Alleged Unauthorized Activities that occurred on the Property were not permitted or authorized under Parts 303 and 325;

The LWMD and Tamarack Development Associates, LLC desire to resolve administrative and civil claims regarding the Alleged Unauthorized Activities undertaken by Tamarack Development Associates, LLC without the necessity of additional administrative and/or judicial proceedings; and

This Agreement identifies the necessary actions to be taken by Tamarack Development Associates, LLC 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,

resolve administrative and civil claims under Parts 303 and 325 based upon the Alleged Unauthorized Activities 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. Tamarack Development Associates, LLC shall restore 0.71 acre of wetlands (Wetland Mitigation/Restoration Area) on the Property in accordance with the LWMD approved Mitigation/Restoration plan attached as Exhibit A. The Mitigation/Restoration Plan includes a site plan, an invasive species control plan, work schedule and monitoring requirements for the Wetland Mitigation/Restoration Area.
2. Tamarack Development Associates, LLC shall implement and complete the first year of the invasive species control, as described in Exhibit A, by not later than September 30, 2010, unless Tamarack Development Associates, LLC requests, and the LWMD approves, in writing, an alternate completion date.
3. Within 30 days of the effective date of this Agreement Tamarack Development Associates, LLC shall provide a Surety Bond or Letter of Credit in the amount of \$5,000 dollars to ensure the Mitigation/Restoration Plan is implemented, monitoring is completed, and any corrective actions are performed as required to comply with the Mitigation/Restoration Plan. An approved financial assurance form is available on the Department's website at www.michigan.gov/deqwetlands. The financial assurance shall be provided to the address in Paragraph 10 of this Agreement.
4. The LWMD shall release the financial assurance upon a showing of all of the following: A. Submittal of all the required monitoring reports; B. Substantial compliance by Tamarack Development Associates, LLC with the performance standards as outlined in this Agreement and the Mitigation/Restoration Plan; C. Submittal of written certification by Tamarack Development Associates, LLC and final approval by the LWMD that the Wetland Mitigation/Restoration Area represents a functional wetland community. Such approval shall not to be unreasonably withheld by the LWMD.
5. Tamarack Development Associates, LLC shall be responsible for monitoring the Wetland Mitigation/Restoration Area for a period of five (5) years following completion of the planting work. An experienced wetland consultant shall conduct the monitoring. A complete assessment of the wetland's development shall be made annually, and shall be provided to the LWMD with annual reports no later than December 31 of each year. The first monitoring report is due December 31, 2009. The annual monitoring report, shall be prepared in accordance with the requirements found in Exhibit A.
6. Tamarack Development Associates, LLC shall not perform any work in the Wetland Mitigation/Restoration Area except as specifically authorized in writing by the LWMD and in accordance with the LWMD approved Wetland Mitigation Restoration Plan. Under no circumstances shall Tamarack Development Associates, LLC perform any beach maintenance activities within the Wetland Restoration Area including without limitation, any mowing, raking or removal of vegetation without prior authorization from MDEQ.

LWMD PERMIT REQUIREMENTS

7. Tamarack Development Associates, LLC shall not conduct any shoreline management or beach maintenance activities except as authorized by and in compliance with applicable law and any permit(s) that may in the future be issued by the Department.
 - A. Any shoreline management activities, including beach maintenance activities, may be conducted only to the extent authorized by law and any applicable future permit and subject to the spatial limitations contained in paragraphs 6 and 7 of this Consent Agreement.
 - B. In the event that Tamarack Development Associates, LLC proposes to engage in shoreline management activities, including beach maintenance activities it shall timely apply for and fully comply with any required permit(s).
8. Tamarack Development Associates, LLC shall apply for and obtain a Nuisance Aquatic Plant Control Permit from the Department's, Water Bureau prior to chemical treatment of invasive species. Tamarack Development Associates, LLC shall submit a new permit application by April 1 for each year of invasive species control required by Exhibit A.

REPORTING AND MONITORING REQUIREMENTS

9. Should either the Wetland Mitigation/Restoration Area fail to become established as a wetland community after three (3) complete growing seasons, or fail to demonstrate satisfactory progress towards a self-sustaining wetland system as determined by the LWMD, Tamarack Development Associates, LLC 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 LWMD approval, immediately implement the corrective measures.
10. All notices, applications, reports, and any other submittals required to be provided by Tamarack Development Associates, LLC to the LWMD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

David Pingel
Michigan Department of Environmental Quality
Land and Water Management Division
P.O Box 30458
Lansing, Michigan, 48909

GENERAL PROVISIONS

11. **PROPERTY ACCESS:** LWMD staff shall have access to the Property to inspect and determine compliance with this Agreement.

12. **SETTLEMENT PENALTY PAYMENT:** Tamarack Development Associates, LLC agrees to pay an administrative settlement amount of \$25,000 to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of entry 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 1116.** 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:** Tamarack Development Associates, LLC shall pay stipulated penalties of One Hundred (\$100.00) Dollars per day for failure to comply with the provisions of Paragraphs 1 through 12 of this Agreement. Tamarack Development Associates, LLC 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 13 of this Agreement, Tamarack Development Associates, LLC 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 14 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:** Tamarack Development Associates, LLC agrees not to contest the legal basis for the penalty assessed pursuant to Paragraph 12 of this Agreement. Tamarack Development Associates, LLC also agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 13 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. Tamarack Development Associates, LLC and the LWMD agree this does not preclude the possibility of informal resolution of disputed issues directly between Tamarack Development Associates, LLC and the LWMD.

16. **RESOLUTION OF ADMINISTRATIVE AND CIVIL CLAIMS BASED UPON LWMD VIOLATION NOTICE:** Upon successful completion of the terms of this Agreement, the LWMD shall deem resolved the Department's administrative and civil claims against Tamarack Development Associates, LLC based upon the Alleged Unauthorized Activities that were the subject of the October 1, 2007 Notice of Violation. Nothing in this Agreement shall affect any potential criminal liability of any person relating to the Alleged Unauthorized

Activities and nothing in this Agreement shall constitute an admission of fact or law in any criminal proceeding.

17. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Tamarack Development Associates, LLC shall not conduct any activity within regulated wetlands or bottomlands of Lake Michigan 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:** Tamarack Development Associates, LLC 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, Tamarack Development Associates, LLC, 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 Tamarack Development Associates, LLC'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 Tamarack Development Associates, LLC's actions or omissions.
19. **FORCE MAJEURE NOTICE:** Tamarack Development Associates, LLC 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 Tamarack Development Associates, LLC to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Tamarack Development Associates, LLC 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 Tamarack Development Associates, LLC sells or transfers any interest in this Property, Tamarack Development Associates, LLC shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest, easement or access in the Property to allow Tamarack Development Associates, LLC to complete the work required by this Agreement.
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 Tamarack Development Associates, LLC or any of its affiliates or employees. The LWMD and Tamarack Development Associates, LLC 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 5 (five) complete growing seasons following completion of the work for the Wetland Mitigation/Restoration Area as described in Paragraphs 1 and 2 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, Tamarack Development Associates, LLC shall submit a request consisting of a written certification that Tamarack Development Associates, LLC has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement. The LWMD Chief shall not unreasonably withhold their consent to termination of the 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.

Tamarack Development Associates, LLC,

By: *R. C. Hermann*
R. C. Hermann, President
Tamarack Development Associates, LLC

Date: 12-30-09

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY*
LAND AND WATER MANAGEMENT DIVISION

By: *Ely D. Fish*
Sgt Elizabeth M. Browne, Chief
Land and Water Management Division

Date: 3-26-2010

Approved as to form:

By: *Robert P. Reichel*
Robert P. Reichel
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

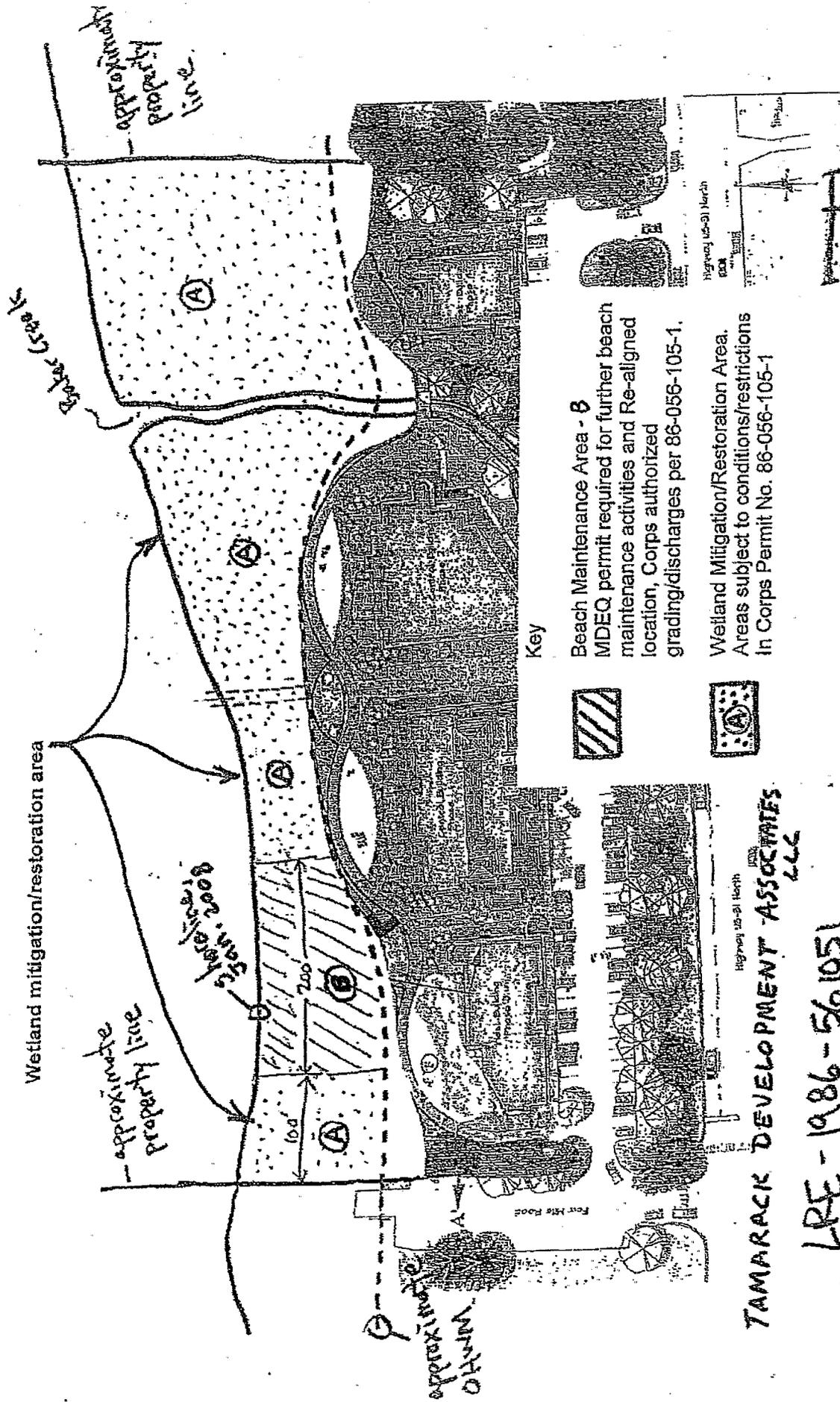
Date: 3-23-2010

*Per Executive Order 2009-45
Michigan Department of Natural
Resources and Environment
Succeeded MDEQ.*

Exhibit A

LAKE MICHIGAN

Figure A



LRE - 1986-561051

drawing prepared from original drawing created by Grobbel Environmental & Planning, Jan 2008

TAMARACK DEVELOPMENT ASSOCIATES
LLC

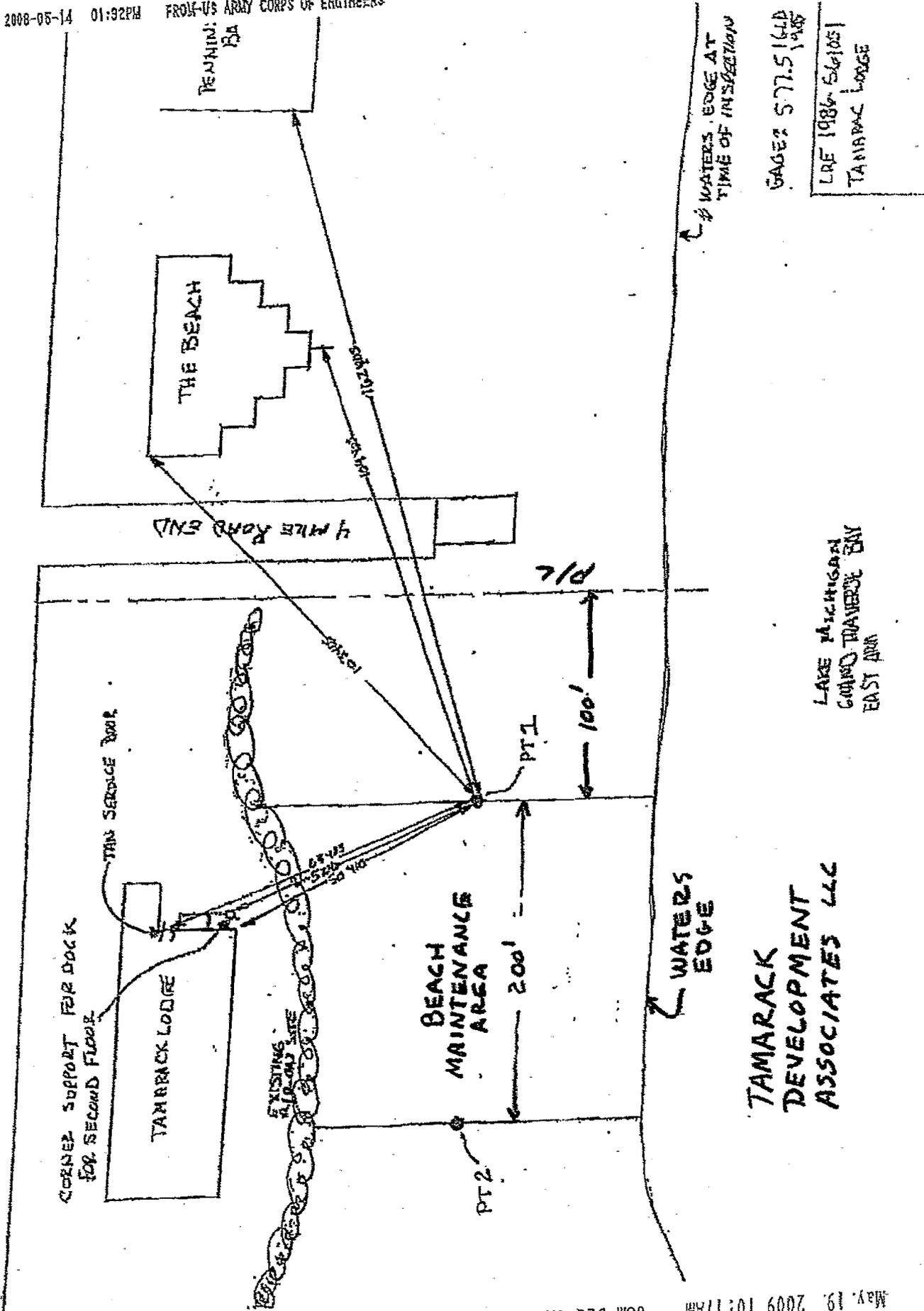
Exhibit A

2008-05-14 01:32PM FROM US ARMY CORPS OF ENGINEERS

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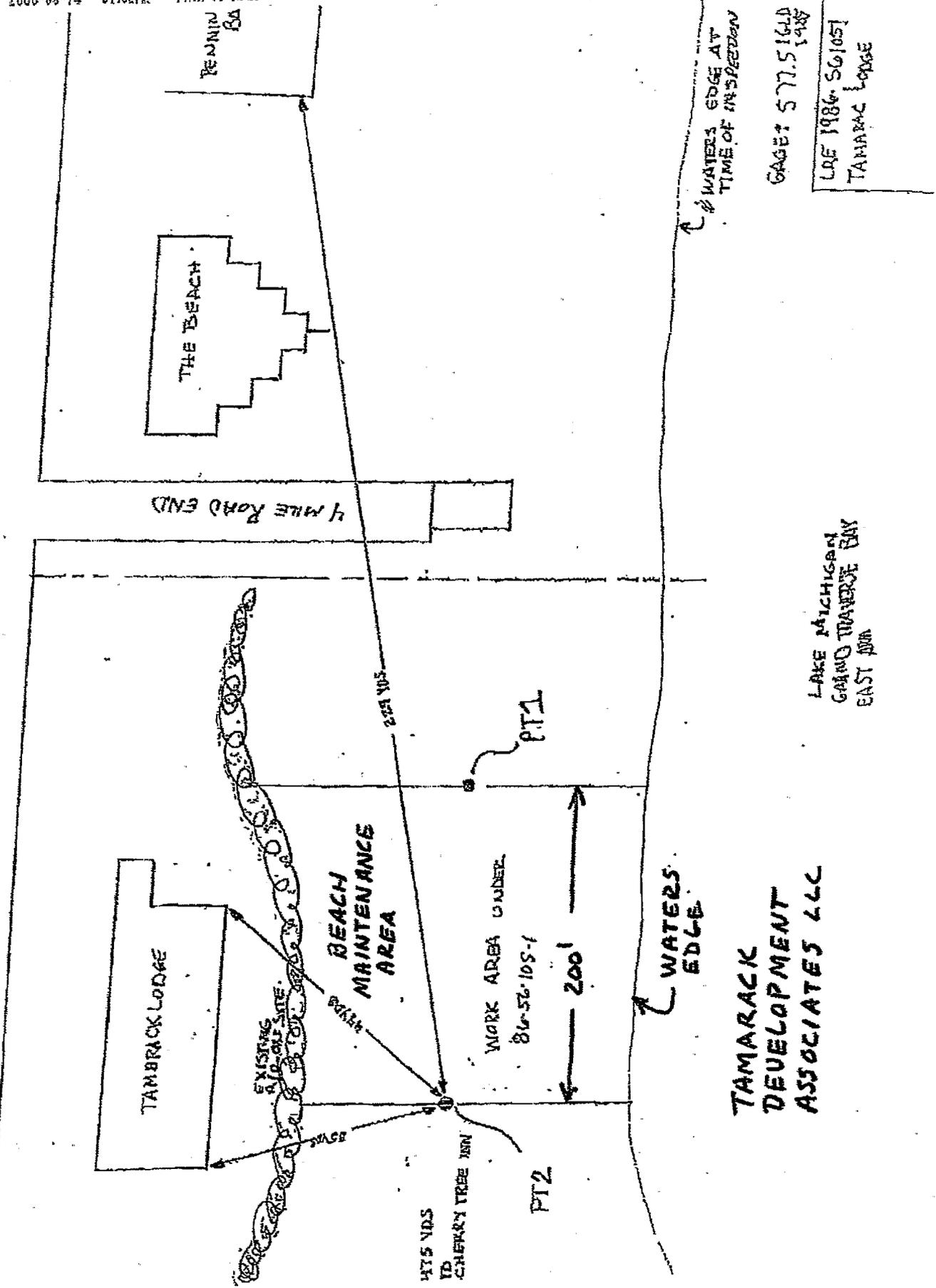
US-3 NORTH



May. 19. 2009 10:17AM SOM DEQ CADILLAC DISTRICT

Exhibit A

US-31 NORTH

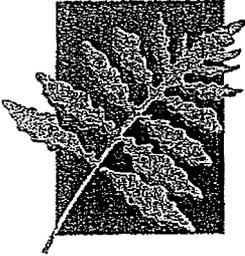


LAKE MICHIGAN GRAND TRAVERSE BAY EAST SIDE

TAMBRACK DEVELOPMENT ASSOCIATES LLC

GAGE# 577.516LD 1988 LDE 1986.501051 TAMBRACK LODGE

EXHIBIT A



Grobbel Environmental & Planning Associates L.L.C.

800 Cottageview Dr., Ste. 211B Traverse City, MI 49684
a Beckett & Reader, Inc. company

September 27, 2009

Mr. Joseph E. Quandt
Zimmerman Kuhn Darling Boyd Quandt & Phelps PLC
412 S. Union St.
Traverse City, Michigan 49684

RE: Revised Restoration Plan, Tamarack Lodge of Traverse City, 2035 U.S. 31 North, Traverse City, Section 9, East Bay Township, T27N, R10W, Grand Traverse County, Michigan. MDEQ Notice of Violation No. 07-28-0019-V.

Dear Mr. Quandt,

Per your request, please find this revised restoration plan for four (4) Tamarack Lodge properties located at 2035 U.S. 31 North, East Bay Township, Grand Traverse County, Michigan. In accordance with Draft consent agreement CA08-17-09, this revised restoration is intended to replace the March 4, 2008 proposed restoration plan submitted to the Michigan Department of Environmental Quality (MDEQ), Land & Water Management Division (LWMD) and the U.S. Army Corps of Engineers (ACE).

RESTORATION GOALS:

Coastal wetland/site restoration at this location will be completed to accomplish the following goals:

- Coastal wetland function restoration through the natural re-vegetation emergent wetland plants; and
- Invasive/exotic species removal/control;

RESTORATION PLAN:

Native plants within Area A will be allowed to naturally re-establish through Rhizomial regeneration. Plants and roots will be protected from future beach maintenance and invasive species will be controlled. This zone is planned for full sun, typically saturated soils and is intended to transition to submerged wetland with recovering lake levels. As noted with the attached photographs, the existing Rhizosphere/root network within Zone A has already naturally re-vegetated with three-square (*Scirpus americanus*), Baltic rush (*Juncus balticus*), and other naturally regenerating native forbs. Emergent/Coastal Wetland plant species planned to naturally regenerate within Area A include: Three-square (*Scirpus americanus*); Baltic rush (*Juncus balticus*); boneset (*Eupatorium perfoliatum*); Joe-pye weed (*Eupatorium maculatum*); goldenrods (*Solidago* spp.); softstem bulrush (*Juncus effusus*), hardstem bulrush (*Scirpus acutus*); Canada rush (*Juncus canadensis*); lake sedge (*Carex lacustris*); and silverweed (*Potentilla anserina*).

Area B will be maintained as a beach for Tamarack owners/residents recreational use. Refer to attached site map for locations of Areas A & B.

INVASIVE SPECIES CONTROL:

Exotic/invasive species will be removed from shoreline/wetland portions of the Tamarack Lodge properties. Invasive/exotic non-woody plant biomass, including seed heads, will be removed in plastic trash bags and disposed of through off-site incineration. Following the removal of exotic/invasive plants, individual exotic/invasive plant stems/stalks will also be carefully hand sprayed with Glyphosate (Rodeo™) to allow for root absorption and elimination. Herbicide application will be completed in conformance with MDEQ permitting requirements. Invasive/exotic woody vegetation will be cut, and stumps "swabbed" and exotic invasive forbs sprayed by hand with Glyphosate (N-phosphonomethyl glycine) applied in accordance with product labeling. Invasive plant species will be monitored and removed from restoration areas for five (5) years. Invasive/exotic plant species will be located within the restoration zone through monthly inspections during the first growing season and bi-annually thereafter for five (5) years. Potential exotic/invasive species to be monitored and controlled by zone include:

- a) **Beach:** Bladder Campion (*Silene vulgaris*); Bouncing bet (*Saponaria officianalis*); Canada thistle (*Cirsium arvense*); purple loosestrife (*Lythrum salicaria*); Smooth brome grass (*Bromus inermis*); common reed (*Phragmites australis*); Canada bluegrass (*Poa compressa*); and Baby's breath (*Gypsophila paniculata*).
- b) **Shoreline/Coastal Wetland:** purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*).

MONITORING & MAINTENANCE PLAN:

Monitoring and maintenance of the coastal wetland restoration area will be conducted for a period of five (5) years. The wetland restoration area will be monitored twice in the first year (i.e. following initial construction and at the end of the first growing season), and then annually during the next four (4) years. Monitoring will be conducted at the end of each active growing season (i.e. July 15 to August 31) to ensure the area stabilization with native plants.

Monitoring records will be kept using the MDEQ's Mitigation Project Review Report form and reported to the MDEQ, LWMD, Gaylord District to include the following:

- 1. Record (as-built) drawings representing the first year monitoring events.
- 2. Identification of wetland restoration plant species, ranked in order of dominance, for each restoration plant species in 5% intervals. A sample plot should be established within the coastal wetland restoration area.
- 3. The sample plot should consist of a 4 feet by 4 feet plot, staked to ensure the accuracy of sampling events over time.
- 4. Observations of wildlife.
- 5. Presence or absence of invasive/exotic plant species.
- 6. Problems encountered and a written plan to remediate any identified problems or deficiencies.
- 7. An assessment of compliance with restoration goals.

Refer to Appendix A for a copy of the MDEQ Mitigation Project Review Report form.

If you have any questions or comments, please feel free to contact me at 231-933-8400 or cgrobbel@grobbelenvironmental.com. Thank you.

Sincerely,
Grobbel Environmental & Planning Associates, L.L.C.



Christopher P. Grobbel, Ph.D.
Sr. Associate

File #1007-31

enclosures

cc: Mr. R.C. Herman, Tamarack Lodge