

**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

**Ken Denison
2531 NE 32nd Court
Lighthouse Point, Florida 33064**

WRD - 40004

File Number: 11-03-0009-V

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Ken Denison and the, Michigan Department of Environmental Quality (MDEQ), Water Resources Division (WRD), and shall become effective on the date this Agreement is signed by Ken Denison and the WRD (Effective Date). All times for performance of activities under this Agreement shall be calculated from the Effective Date.

RECITALS

By correspondence dated May 11, 2011, the WRD issued a Notice of Violation (Notice) pursuant to the State of Michigan's Floodplain Regulatory Authority, found in Part 31, Water Resources Protection; Part 301, Inland Lakes and Streams; Part 303, Wetlands Protection; and Part 353, Sand Dunes Protection and Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA), to Ken Denison, Dave Herweyer, and the Gertrude Winslow Denison Trust. The WRD alleged within the Notice that Ken Denison authorized construction activities in the Kalamazoo River during restricted no work dates, placed fill material in wetland and floodplain, removed vegetation, and graded and placed material in an area of critical dune behind the permitted seawall replacement. All cited work exceeded the activities permitted in MDEQ File No. 09-03-0017-P (Permit) and on property located within Allegan County (T03N, R16W, Section 4) locally known as 3530 66th Street, Saugatuck, Michigan 49453 (Property);

The WRD requested within the Notice (MDEQ File No. 11-03-0009-V) that all Alleged Unauthorized Activities on the Property cease and desist and that the area affected by the Alleged Unauthorized Activities be brought into compliance;

Ken Denison owned or had control of the Property upon which the Alleged Unauthorized Activities occurred;

Ken Denison and the WRD acknowledge that prior to construction and development activities occurring on the Property, which included the placement of fill and other materials in wetland, floodplain, and critical dune, there existed wetlands, floodplains, and critical dune regulated (Regulated Wetland/Floodplain/Critical Dune) by the State of Michigan under Parts 303, 31, and 353, of the NREPA, lying adjacent to the Kalamazoo River regulated by the State of Michigan under Part 301, of the NREPA.

The WRD and Ken Denison 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 Ken Denison and the WRD, and imposes certain conditions upon performance of these actions. Successful completion of the terms of this Agreement will, in the opinion of the WRD, meet the statutory provisions of

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Parts 31, 301, 303, and 353, of the NREPA, 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 90 days of the Effective Date of this Agreement, Ken Denison shall complete restoration of approximately 6,340 square feet of critical dune area in accordance with the WRD approved Restoration Plan (Exhibit A: Restoration Plan Denison Residence) to conditions similar to those that had existed prior to the Alleged Unauthorized Activities.
2. Ken Denison shall provide to the WRD, at the address provided in Paragraph 11 of this Agreement, written notification of completion of the restoration activities.
3. Ken Denison shall be responsible for monitoring the Critical Dune Restoration Area for a period of three (3) years following completion of the planting work. A complete assessment of the Critical Dune Restoration Area shall be conducted annually, by a qualified professional. The monitoring report shall include an evaluation of the development and survivorship of the vegetative plantings, the presence and treatment of any invasive vegetative species, and any indicators of soil erosion. The monitoring report shall be provided to the WRD no later than December 31 of each year.

WRD PERMIT REQUIREMENTS

4. Ken Denison shall, within 30 days of the Effective Date of this Agreement, provide to the WRD an After-the-Fact Joint Permit Application (ATF), ATF application fee of \$4,300, (which includes the applicable special exemption fee), a site plan for the Property and description of activities and estimates of fill material that have been placed within regulated areas and impacted by the Alleged Unauthorized Activities. The description of activities must include: (1) a professionally sealed site plan that provides for the disposal of storm waters without serious soil erosion and without sedimentation of any stream or other body of water; (2) the application plans shall identify the activities described in Exhibit B; (3) a cross section for each representative work location to show the preconstruction grade and existing grade, and (4) a special exception application.
5. Within 30 days of the submittal of the ATF application and fee (\$4,300), the WRD shall review the information submitted with the ATF application and notify Ken Denison, in writing, of any additional information necessary to complete the processing of the ATF and special exception application.
6. Within 30 days after receiving the WRD's notice identified in Paragraph 6 of this Agreement, Ken Denison shall submit the information required by the WRD to complete the ATF and special exception application.
7. The WRD shall complete processing of the ATF and special exception application in accordance with the statutory requirements of Parts 31, 301, 303, and 353, of the NREPA.

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8. If the WRD determines that an ATF and special exception permit can be issued, the WRD shall issue the permit to Ken Denison.
9. If the WRD determines through the ATF and special exception application review process that an ATF and special exception permit cannot be issued to Ken Denison, then this Agreement shall be deemed null and void. In such event, the WRD reserves the right to pursue all available enforcement options as provided by law. Ken Denison reserves the right to contest the issuance of the notice of violation, and the denial of the ATF and special exception application through the MDEQ's administrative hearing process, or as otherwise provided by law.

REPORTING AND MONITORING REQUIREMENTS

10. Ken Denison shall be responsible for monitoring the Critical Dune Restoration Area for a period of three (3) years following completion of the planting work. Should the Critical Dune Restoration Area fail to become an established natural dune as designed after three (3) complete growing seasons, or should either fail to demonstrate satisfactory progress towards a stabilized system as designed, Ken Denison 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 plants;
 - D. Submit a copy of the proposed corrective measures to the WRD for review;
 - E. Upon WRD approval, immediately implement the corrective measures.
11. All notices, applications, reports, and any other submittals required to be provided by Ken Denison to the WRD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Mr. Ben Zimont
MDEQ-WRD
7953 Adobe Road
Kalamazoo, Michigan 49009

GENERAL PROVISIONS

12. **PROPERTY ACCESS:** WRD staff shall have access to the Property to inspect and determine compliance with this Agreement. The WRD shall provide a minimum of a 24-hour advance notice to Ken Denison prior to inspection of the Property.
13. **SETTLEMENT PENALTY PAYMENT:** Ken Denison agrees to pay an administrative settlement amount of Four thousand One hundred dollars \$4,100 to the general fund of the State of Michigan. These funds shall be paid within thirty (30) calendar days of the issuance of the ATF permit required in paragraph 4 of this Agreement. Payment is to be

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made by certified check payable to the "State of Michigan." To ensure proper credit, the payment made pursuant to this Agreement must include "Payment Identification: WRD-40004. This payment shall be sent to:

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

14. **STIPULATED PENALTIES:** Ken Denison shall pay stipulated penalties of One hundred Dollars (\$100.00) per day for failure to comply with the provisions of Paragraphs 1 through 4, paragraph 6, and paragraphs 10 through 13 of this Agreement. Ken Denison, 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.
15. **STIPULATED PENALTY PAYMENT:** To insure timely payments of any stipulated penalties provided in Paragraph 14 of this Agreement, Ken Denison 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 15 shall be paid in the form of a cashiers check payable to the "State of Michigan" and sent to:

Michigan Department of Environmental Quality
Revenue Control Unit
P.O. Box 30657
Lansing, Michigan 48909-8157
16. **PENALTY PAYMENT DISPUTE:** Ken Denison agrees not to contest the legal basis for the penalty assessed pursuant to Paragraph 13 of this Agreement. Ken Denison also agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 14 of this Agreement, but reserves the right to dispute in a court of competent jurisdiction the factual basis upon which a demand by the WRD of stipulated fines is made. Ken Denison and the WRD agree this does not preclude the possibility of informal resolution of disputed issues directly between Ken Denison and the WRD.
17. **RESOLUTION OF WRD VIOLATION NOTICE:** As part of the successful completion of the terms of this Agreement, the WRD shall deem resolved the May 11, 2011, Notice to Ken Dennison and close WRD complaint number 11-03-0009-V.
18. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Ken Denison shall not conduct any activity within regulated bottomlands, critical dunes, wetlands, or floodplains, except as provided by this Agreement, or as authorized by separate permit issued by the WRD. This Agreement does not obviate the need to acquire additional state, local, or federal permits as may be required by law.
19. **FORCE MAJEURE:** Ken Denison 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

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Majeure" means an occurrence or nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Ken Denison, such as an "Act of God," untimely review of permit applications or submissions by the WRD or other applicable authority; and acts or omissions of third parties that could not have been avoided or overcome by Ken Denison'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 Ken Denison's actions or omissions.

20. **FORCE MAJEURE NOTICE**: Ken Denison shall notify the WRD 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 (10) calendar days, and shall describe in detail the anticipated length of delay, the precise cause of the delay, the measures taken by Ken Denison to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Ken Denison to comply with the Notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.
21. **ASSIGNMENT OF RIGHTS**: This Agreement shall be binding on the parties, their officers, servants, and employees. In the event that Ken Denison sells or transfers any interest in this Property, Ken Denison shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Ken Denison to complete the work required by this Agreement and the work to be allowed by the ATF permit.
22. **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.
23. **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.
24. **DENIAL OF LIABILITY**: Nothing contained in this Agreement shall be construed as an admission of liability or wrong doing by Ken Denison. The WRD and Ken Denison agree that the signing of this Agreement is for settlement purposes only.
25. **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.
26. **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.
27. **TERMINATION OF AGREEMENT**: This Agreement shall remain in full force for a period of at least three (3) complete growing seasons following completion of the planting work for the Critical Dune Restoration Area as described in Paragraphs 1, 3, and 10 of this Agreement. This Agreement shall terminate only upon written notice of termination issued

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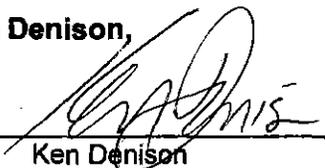
by the WRD Chief. Prior to issuance of a written notice of termination, Ken Denison shall submit a request consisting of a written certification that Ken Denison has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement. Provided that a written request is made and not reasonably disputed, the WRD shall not withhold termination of this Agreement.

28. **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.

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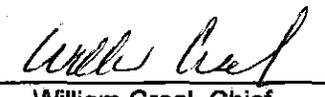
IN WITNESS WHEREOF, the parties hereto make and execute this Agreement on the date first above written. The undersigned certify they are fully authorized by the party they represent, to enter into this Agreement and to legally bind that party to this Agreement.

Ken Denison,

By: 
Ken Denison

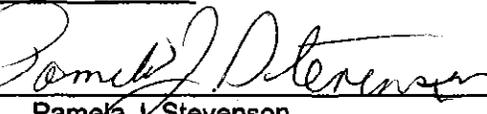
Date: 6-4-14

**MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER RESOURCES DIVISION**

By: 
William Creal, Chief
Water Resources Division

Date: July 1, 2014

Approved as to form:

By: 
Pamela J. Stevenson
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

Date: 6/30/14

