

CHARLES G. KELLY
DAVID C. WHIPPLE
KEITH D. ZICK
DAVID A. KEYES
JOHN D. ADAIR
JANAL L. MOSSETT
ELIZABETH S. KELLY

KELLY LAW FIRM

KELLY WHIPPLE ZICK KEYES ADAIR & MOSSETT, PLLC

Since 1889

**NORMAN D. BEAUCHAMP
OF COUNSEL**

[email: dkeyes@porthuronlaw.com](mailto:dkeyes@porthuronlaw.com)

June 27, 2014

VIA FACSIMILE AND FIRST CLASS MAIL

24th Circuit Court
Attn: Christina
Courthouse, Room 303, 60 W Sanilac
Sandusky, MI 48471

Re: Jentz vs. MDEQ, et al.
24th Circuit Court Case No. 11-34282

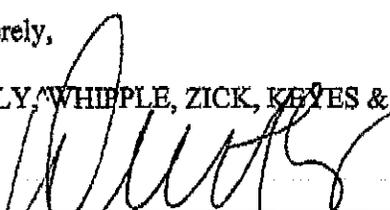
Dear Christina:

Enclosed is the Consent Order for entry. Please return six true copies in the enclosed self-addressed stamped envelope.

Should you have any questions, feel free to contact me.

Sincerely,

KELLY, WHIPPLE, ZICK, KEYES & MOSSETT, P.L.L.C.

By: 
David A. Keyes

2014 JUN 27 10 26
DENISE MCGUIRE
CLERK
FILED
SANILAC COUNTY
CLERK'S OFFICE

DAK/nkb
Enclosure

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SANILAC

EARL JENTZ and KAREN JENTZ, husband
and wife; GARY PFLANZER and MARGARET
PFLANZER, husband and wife; and CHRIS
PFLANZER and VICTORIA PFLANZER,
husband and wife,

Plaintiffs/Counter-Defendants,

vs.

Case No. 11-34282
Hon. Donald A. Teeple

STATE OF MICHIGAN,
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENT f/k/a DEPARTMENT
OF ENVIRONMENTAL QUALITY,

CONSENT ORDER

Defendant/Counter-Plaintiff/
Third Party Plaintiff,

vs.

DALE PFLANZER, DOUGLAS J. VOLMERING,
LES VOLMERING, McEACHIN EXCAVATING,
INC., a Michigan corporation, and SANILAC
COUNTY DRAIN COMMISSIONER,

Third Party Defendants

David A. Keyes (P43917)
Kelly, Whipple, Zick, Keyes & Mossett, P.L.L.C.
Attorneys for Plaintiffs/Counter-Defendants
627 Fort Street
Port Huron, MI 48060
(810) 987-4111

Andria M. Ditschman (P48247)
Mark T. Koerner (P66864)
Michael G. Woodworth (P26918)
The Hubbard Law Firm
Attorneys for Sanilac County Drain Comm.
P.O. Box 80857
Lansing, MI 48908-0857
(517) 886-7176

SANILAC COUNTY
CLERK'S OFFICE
FILED
2014 JUN 30 A 8:23
DENISE MCGUIRE
CLERK

THIS IS A
TRUE COPY
OF THE ORIGINAL
DENISE MCGUIRE
SANILAC COUNTY CLERK

Brian J. Negele (P41846)
 John Fordell Leone (P38938)
 Michigan Department of Attorney General
 Environment, Natural Resources and
 Agriculture Division
 Attorneys for Defendant/Counter-Plaintiff/
 Third-Party Plaintiff
 P.O. Box 30755
 Lansing, MI 48909
 (517) 373-7540

Douglas R. Kelly (P49856)
 Matthew J. Pattwell (P72419)
 Clark Hill PLC
 Attorneys for Dale Pflanzler
 212 East Grand River Avenue
 Lansing, MI 48906
 (517) 318-3100

Jeffrey M. Sangster (P30791)
 George F. Curran, III (P31328)
 Kotz Sangster Wysocki P.C.
 Attorneys for McEachin Excavating, Inc.
 400 Renaissance Center, Suite 3400
 Detroit, MI 48243
 (313) 259-8300

Donald J. Clark (P11921)
 Clark & Clark, P.C.
 Attorneys for Douglas J. Volmering and
 Les Volmering
 115 North Hanselman Street
 Bad Axe, MI 48413
 (989) 269-6487

CONSENT ORDER

At a session of said Court held in the City of Sandusky,
 County of Sanilac, State of Michigan on JUNE 30, 2014

PRESENT: Hon: Gregory S. Ross
 Circuit Court Judge

WHEREAS, the parties having stipulated to entry of a Consent Order; and WHEREAS, the Court being duly advised on the premises.

RECITALS:

WHEREAS, a dispute arose between Plaintiffs/Counter-Defendants Earl Jentz and Karen Jentz, Gary Pflanzler and Margaret Pflanzler, and Chris Pflanzler and Victoria Pflanzler ("the Pflanzler Group"); Third-Party Defendant Dale Pflanzler ("Dale Pflanzler"); Third-Party Defendants Douglas J. Volmering and Les Volmering ("Douglas Volmering" and "Les Volmering"); Third-Party Defendant McEachin Excavating, Inc. ("McEachin Excavating"); and Defendant/Counter-Plaintiff and Third-Party Plaintiff Michigan Department of Natural Resources and Environment f/k/a Department of Environmental Quality ("MDEQ"), with respect to real property located in Minden Township, Sanilac County, Michigan, described as:

The East half of the Southwest quarter and the Southeast quarter of the Northwest quarter and the Southeast quarter; and all that piece of land lying South of the Pere Marquette Railroad being part of the Southeast quarter of the Northeast quarter; all in Section 17, Town 14 North, Range 14 East, and the Northwest quarter of the

Northeast quarter of Section 20, Town 14 North, Range 14 East, containing 328 acres of land, more or less.

Land in the Township of Minden, Sanilac County, Michigan, described as:

The Southwest $\frac{1}{4}$ of Northwest $\frac{1}{4}$ and the West $\frac{1}{2}$ of Southwest $\frac{1}{4}$ of Section 17, Town 14 North, Range 14 East, more commonly known as 7675 Obie Road.

TAX I.D. NOS. 190-020-100-020-00, 190-017-400-010-00

(the "Property").

WHEREAS, in July, 2007, Gary Pflanzner and Dale Pflanzner contacted the Natural Resources Conservation Service ("NRCS") for permission to fill in ditches and tile fields on the Property which subsequently resulted in NRCS representative David Newkirk giving written approval to clear and tile approximately 114 acres of the Property on or about August 8, 2007.

WHEREAS, NRCS representative David Newkirk advised Gary Pflanzner and Dale Pflanzner that there was no reason to contact the MDEQ for permission to clear and tile the Property.

WHEREAS, in Fall, 2007, pursuant to assurances and authorizations McEachin Excavating began clearing the land identified by NRCS representative David Newkirk in the written documents and filling the ditches.

WHEREAS, on October 29, 2007, the MDEQ issued a "Notice of Violation" on the Property alleging violation of the Natural Resources and Environmental Protection Act ("NREPA").

WHEREAS, on March 17, 2008, the MDEQ issued an "Order to Restore" which mandated that certain areas of the Property be restored to its original condition that existed prior to the NRCS's approved filling and clearing.

WHEREAS, this lawsuit was commenced on November 21, 2011.

WHEREAS, all parties have reached certain understandings regarding the resolution and settlement of their disputes which they wish to evidence by this Agreement.

NOW, THEREFORE, in order to avoid the expense and uncertainty of litigation and in consideration of the benefits to be derived by the settlement of the claims and the observance of the mutual covenants contained herein, as well as other good and valuable consideration, the parties hereby agree to settle and resolve all claims and controversies between them, that were or could have been brought, as follows:

IT IS HEREBY ORDERED AS FOLLOWS:

1. Authorization to Install Drain Tile and to Farm. MDEQ authorizes the installation of drain tile and farming in the areas contemplated in the "Areas to be Cleared/Cropped" diagram prepared by NRCS's David Newkirk on or about August 8, 2007, a copy of which is attached as Exhibit 1 and accordingly, the March 17, 2008 "Order to Restore" issued by MDEQ is vacated. There shall be no mitigation required by MDEQ on any portion of the Property nor shall there be any monitoring of any work associated with this authorization to install drain tile and the farming of the Property.

2. No Conservation Easement. No portion of the Property will be subject to any conservation easement.

3. Conversion to Non-Farming Use. The Parties agree that the areas which may be tilled and farmed as set forth in paragraph 1 above shall not be converted to any non-farming use which would require an MDEQ permit.

4. Payment by MDEQ to the Pflanze Group, Dale Pflanze and McEachin Excavating. The MDEQ agrees to pay the Pflanze Group, Dale Pflanze and McEachin Excavating the total amount of \$25,856.75 by June 30, 2014, in full and final settlement of all the parties. MDEQ's payment shall be made in the form of a check, made payable to "Clark Hill PLC" and mailed to Douglas R. Kelly, Clark Hill PLC, 151 S. Old Woodward Ave., Ste. 200, Birmingham, MI 48009.

5. Dismissal. Upon execution of this Agreement and payment of the settlement funds, a Stipulated Order of Dismissal With Prejudice shall be approved and entered with the Court.

6. Mutual Release.

The Pflanze Group and Dale Pflanze do, for their agents, servants, employees, representatives, together with their predecessors, successors, and assigns, hereby fully and forever release, acquit, and discharge each other, McEachin Excavating, Douglas and Les Volmering and the MDEQ, their officers, directors, shareholders, agents, servants, employees, representatives, in both their individual and representative capacities, together with their predecessors, successors, and assigns, of and from any and all claims, demands, actions, and causes of action, suits, damages, judgments, levies, and executions of every kind, nature, and description, including any claim for contribution or indemnity arising under common law or statute, whether known or unknown, in law or in equity, which the Pflanze Group and Dale Pflanze brought or could have brought, or hereafter may have, by reason of any matter, cause, act, or omission, including those which arise out of or are in connection with the matters or occurrences that are the subject matter of the dispute.

The MDEQ does, for its agents, servants, employees, representatives, together with their predecessors, successors, and assigns, hereby fully and forever release, acquit, and discharge the Pflanze Group, Dale Pflanze, Douglas and Les Volmering and McEachin Excavating, their

officers, directors, shareholders, agents, servants, employees, representatives, in both their individual and representative capacities, together with their predecessors, successors, and assigns, of and from any and all claims, demands, actions, and causes of action, suits, damages, judgments, levies, and executions of every kind, nature, and description, including any claim for contribution or indemnity arising under common law or statute, whether known or unknown, in law or in equity, which the MDEQ brought or could have brought, or hereafter may have, by reason of any matter, cause, act, or omission, including those which arise out of or are in connection with the matters or occurrences that are the subject matter of the dispute.

McEachin Excavating and Douglas and Les Volmering do for their agents, servants, employees, representatives, together with their predecessors, successors, and assigns, hereby fully and forever release, acquit, and discharge each other, the Pflanzner Group, Dale Pflanzner and the MDEQ, their officers, directors, shareholders, agents, servants, employees, representatives, in both their individual and representative capacities, together with their predecessors, successors, and assigns, of and from any and all claims, demands, actions, and causes of action, suits, damages, judgments, levies, and executions of every kind, nature, and description, including any claim for contribution or indemnity arising under common law or statute, whether known or unknown, in law or in equity, which the McEachin Excavating or Douglas or Less Vomering brought or could have brought, or hereafter may have, by reason of any matter, cause, act, or omission, including those which arise out of or are in connection with the matters or occurrences that are the subject matter of the dispute.

7. No Admission of Facts or Liability: It is understood and agreed, by and between the parties hereto, that this is the settlement of doubtful and disputed claims. The execution of this settlement agreement and release should not be construed as an admission of facts and/or liability on the part of the parties, including but not limited to whether any portion of the property constitutes wetlands under federal or state law, and which liability each party expressly denies, as they are intended merely to resolve a dispute, avoid the expense and uncertainty of litigation, and to buy the parties their peace. It is further agreed that none of the terms and recitals of this Consent Order will constitute admissions by any of the parties.

8. Mineral Rights. The Parties agree and acknowledge that the Pflanzner Group and Dale Pflanzner retain any and all mineral rights to the Property.

9. Informed Consent. The Parties hereby represent and warrant that they have read and understand this settlement Agreement in its entirety prior to its execution and have had the opportunity to review it with counsel. The Parties further represent and warrant that they execute this Settlement Agreement and Release freely and voluntarily.

10. Governing Law. This Agreement shall be governed by the laws of the state of Michigan.

11. Entire Agreement. This Agreement and the assignments referenced herein set forth all of the parties understandings with respect to the subject matter hereof and supersede any and all prior agreements with respect to the subject matter hereof.

12. Amendment. This Agreement may only be amended by a written agreement executed by the party or parties against whom enforcement of the amendment is sought to be obtained.

13. Counterparts. This Agreement may be executed in any number of counterparts, certain of which counterparts may be executed by less than all of the parties, provided that upon obtaining signatures from all parties, all the counterparts together shall constitute one and the same instrument. The signatures may be either original or facsimile signatures, and the parties agree and acknowledge that facsimile signatures shall constitute original signatures.

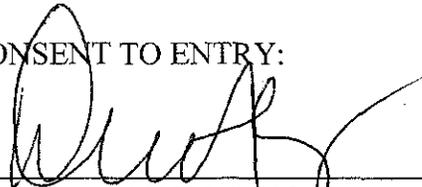
14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.

15. No Presumptions. All parties to this Agreement have been represented by counsel and have had an opportunity to contribute to the drafting of this Agreement. Accordingly, in construing the provisions of this Agreement, there shall be no presumptions for or against any party or parties based upon who may have participated in the drafting of this Agreement.

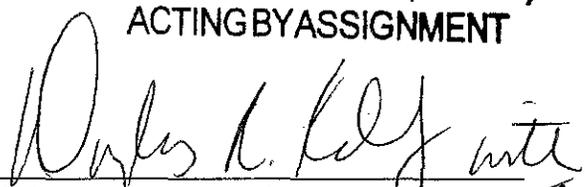
HON. DONALD A. TEEPLE
Circuit Court Judge

GREGORY S. ROSS (P31377)
ACTING BY ASSIGNMENT

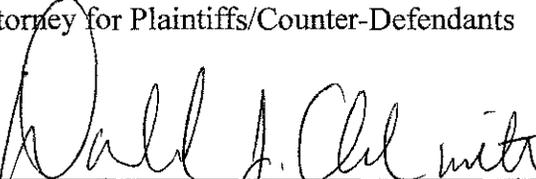
CONSENT TO ENTRY:



DAVID A. KEYES (P43917)
Attorney for Plaintiffs/Counter-Defendants



DOUGLAS R. KELLY (P49856)
Attorney for Third-Party Defendant
Dale Pflanzner

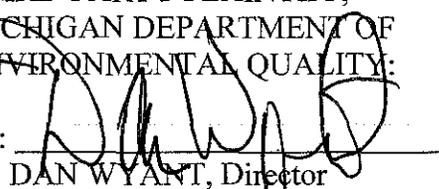


DONALD J. CLARK (P11921)
Attorney for Third-Party Defendants
Douglas J. Volmering and Les Volmering



GEORGE F. CURRAN, III (P31328)
Attorney for Third-Party Defendant
McEachin Excavating, Inc.

FOR DEFENDANT/COUNTER-PLAINTIFF/
THIRD-PARTY PLAINTIFF,
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY:

By: 

DAN WYANT, Director
Michigan Department of Environmental
Quality

Dated: 6/19/14

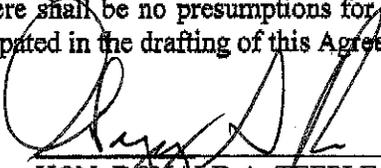
BILL SCHUETTE
Attorney General

By: 

BRIAN J. NEGELE (P41846)
JOHN FORDELL LEONE (P38938)
Assistant Attorneys General
Michigan Department of Attorney General
Environment, Natural Resources, and
Agriculture Division

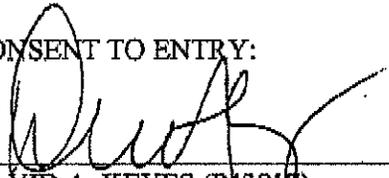
Dated: 06-18-2014

15. No Presumptions. All parties to this Agreement have been represented by counsel and have had an opportunity to contribute to the drafting of this Agreement. Accordingly, in construing the provisions of this Agreement, there shall be no presumptions for or against any party or parties based upon who may have participated in the drafting of this Agreement.

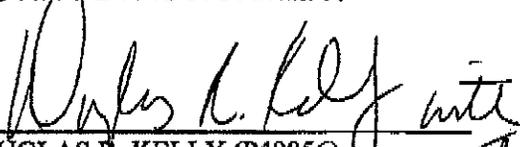


HON. DONALD A. TEEPLE
Circuit Court Judge
GREGORY S. ROSS (P31377)
ACTING BY ASSIGNMENT

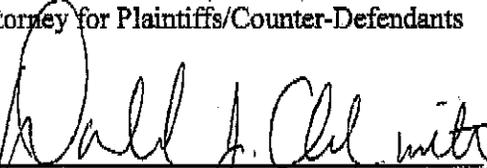
CONSENT TO ENTRY:



DAVID A. KEYES (P43917)
Attorney for Plaintiffs/Counter-Defendants



DOUGLAS R. KELLY (P49856)
Attorney for Third-Party Defendant
Dale Pflanzner

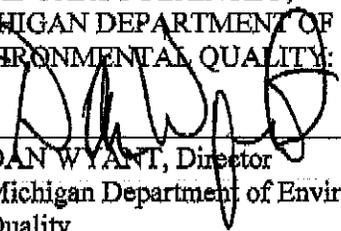


DONALD J. CLARK (P11921)
Attorney for Third-Party Defendants
Douglas J. Volmering and Les Volmering



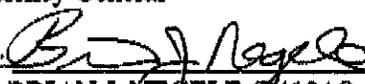
GEORGE F. CURRAN, III (P31328)
Attorney for Third-Party Defendant
McEachin Excavating, Inc.

FOR DEFENDANT/COUNTER-PLAINTIFF/
THIRD-PARTY PLAINTIFF,
MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY:

By: 
DAN WYANT, Director
Michigan Department of Environmental
Quality

Dated: 6/19/14

BILL SCHUETTE
Attorney General

By: 
BRIAN J. NEGELE (P41846)
JOHN FORDELL LEONE (P38938)
Assistant Attorneys General
Michigan Department of Attorney General
Environment, Natural Resources, and
Agriculture Division

Dated: 06-18-2014

2014 JUN 30 A 8:23
DENISE MCGUIRE
CLERK
SARILAC COUNTY
CLERK'S OFFICE
FILED

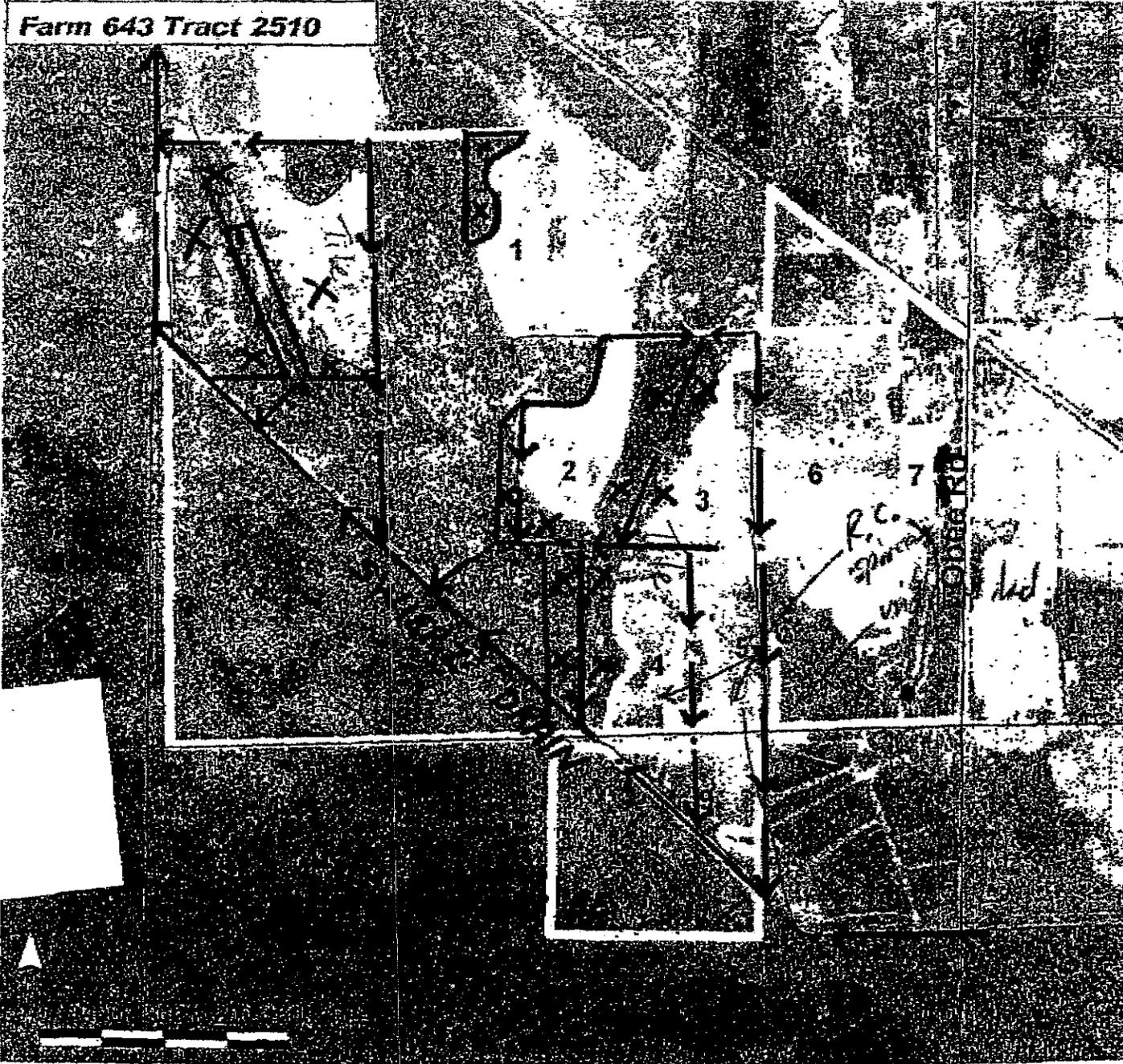
THIS IS A
TRUE COPY
OF THE ORIGINAL
DENISE MCGUIRE
SARILAC COUNTY CLERK

Exhibit 1

All 'X' Areas Cleared

Farm 643 Tract 2510

Field	Acres	
1	11.36	NHEL
2	10.26	NHEL
3	6.82	NHEL
4	8.35	NHEL
5	11.36	NHEL
6	41.94	NHEL
7	2.11	NHEL
8	11.59	
9	10.16	NHEL



Minden
17+20

X=AREAS TO BE
CLEARED/CROPPED

David Newberry
D.C.

8-8-2007

USDA
**PROGRAM
 PURPOSES
 ONLY**
 Sanilac FSA
 50 E. Miller Rd.
 Sandusky MI 48471
 810-648-2998
 Total Cropland Acres
 113.7

000207