

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

Jackson County Airport
3606 Wildwood Avenue
Jackson, Michigan 49202

WRD: WRD 40053
File Number: 13-38-0002-V

CONSENT AGREEMENT

This Consent Agreement (Agreement) is entered into by and between Jackson County Airport and the Water Resources Division (WRD), Michigan Department of Environmental Quality (Department) and shall become effective on the date this Agreement is signed by Jackson County Airport 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 March 29, 2013, the WRD 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 Jackson County Airport. The WRD alleged within the Notice that Jackson County Airport conducted Mechanical Land clearing activities within regulated wetlands consisting of the removal of woody and herbaceous vegetation, including rooting structures, and leveling of the soil surface by mechanical means (Alleged Unauthorized Activities). The activities occurred on property owned by Jackson County and administered by Jackson County Airport located within T2S R1W Section 28, Blackman Township, Jackson County (Property).

The WRD requested within the Notice (13-38-0002-V) that all Alleged Unauthorized Activities on the Property stop.

Jackson County Airport owned or had control of the Property and performed the Alleged Unauthorized Activities without a permit under Part 303.

Jackson County Airport and the WRD acknowledge that Mechanical Land clearing activities occurred over approximate 64 acres of the Property and that prior to the alleged unauthorized activities occurring on the Property, there existed approximately 8.85 acres of wetlands regulated (Regulated Wetland) by the State of Michigan under Part 303 of which approximately five (5) acres of Regulated Wetlands were impacted in some manner by the clearing project.

The WRD and Jackson County Airport desire to resolve this dispute without the necessity of additional administrative and/or judicial proceedings.

This Agreement identifies the necessary actions to be taken by Jackson County Airport 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 Part 303, and thereby resolve those allegations set for in the Notice.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Jackson County Airport and the WRD agree as follows:

COMPLIANCE AND IMPLEMENTATION SCHEDULE

SITE RESTORATION REQUIREMENTS

1. Within 30 days of the Effective Date of this Agreement, Jackson County Airport shall submit to the WRD, at the address indicated in Paragraph 7 of this Agreement, plans for restoration on approximately 5 acres of Property that were impacted by the Mechanical Land clearing activities, as shown in Exhibit A, (Restoration Areas), to conditions specified in this Agreement and WRD approved plans. The plans to restore the Restoration Areas shall include, at a minimum, the following provisions:
 - A. The Restoration Plan shall also include a planting plan for Wetland Restoration Area 1 and 2 which includes installation of twenty five (25) 6-10 foot tall container grown red maple, silver maple, swamp white oak and sycamore trees and installation of fifty (50) 1 gallon or larger containerized stock plus one hundred (100) bare root shrubs of the following species red-osier dogwood, silky dogwood, gray dogwood, black elderberry, and red chokeberry. The plants will be spread out among wetland Restoration Area 1 and Area 2.
 - B. The plans to restore the Restoration Area shall include locations for placement of (20) permanent signs on the perimeter of Wetland Restoration Area 1 and Wetland Restoration Area 2 denoting the presence of State of Michigan regulated wetlands.
2. Within 15 days of receipt of the restoration and planting plans identified in Paragraph 1, the WRD shall provide to Jackson County Airport written approval and/or revisions to the proposed plans and construction schedule. Jackson County Airport shall not initiate restoration activities until the WRD has provided final written approval or modification of the wetland restoration plans and approval of the work schedule.
3. Within 15 days of completion of the wetland restoration, Jackson County Airport shall provide to the WRD, at the address provided in Paragraph 7 of this Agreement, written notification of completion of the Wetland Restoration activities.
4. Jackson County Airport shall be responsible for monitoring the Restoration Area for a period of five (5) growing seasons following completion of the planting work. An experienced wetland consultant shall conduct the monitoring and shall provide a report to the WRD no later than December 31 of each year, following completion of planting. Utilizing recognized and established scientific procedures the annual monitoring report, shall be prepared in accordance with the requirements found in Exhibit B.

5. Jackson County Airport agrees that prior to a change in ownership, use or other development activity; Jackson County Airport will contact with a qualified wetland consultant to identify the presence and boundaries of wetlands on the entire property and shall request verification by WRD.

REPORTING AND MONITORING REQUIREMENTS

6. Should a significant number of the woody species fail to become established after three (3) complete growing seasons in either Wetland Restoration Area 1 or 2 Jackson County Airport shall:
 - A. Assess the problem(s) and identify the probable cause(s);
 - 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, replanting of woody species.
 - D. Submit a copy of the proposed corrective measures to the WRD for review;
 - E. Upon WRD approval, immediately implement the corrective measures.
7. All notices, applications, reports, and any other submittals required to be provided by Jackson County Airport to the WRD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Mr. Jon Russell, District Supervisor
Jackson District Office
Water Resources Division
Michigan Department of Environmental Quality
301 East Louis Glick Highway, Jackson, Michigan 49201

GENERAL PROVISIONS

8. **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 24 hours advance notice to Jackson County Airport prior to inspection of the Property.
9. **SETTLEMENT PENALTY PAYMENT:** Jackson County Airport agrees to pay an administrative settlement amount of \$6,500 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 ensure proper credit, the payment made pursuant to this Agreement must include "Payment Identification: **WRD 40063**." This payment shall be sent to:

Accounting Services Division
Cashier's Office for DEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

10. **STIPULATED PENALTIES:** Jackson County Airport shall pay stipulated penalties of One Hundred (\$100.00) Dollars per day for failure to comply with the provisions of Paragraphs 1 through 9 of this Agreement. Jackson County Airport, 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.
11. **STIPULATED PENALTY PAYMENT:** To ensure timely payments of any stipulated penalties provided for in Paragraph 10 of this Agreement, Jackson County Airport 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. Any payments associated with this Paragraph 11 shall be paid in the form of a cashier's check payable to the "State of Michigan", and sent to:

Accounting Services Division
Cashier's Office for DEQ
P.O. Box 30657
Lansing, Michigan 48909-8157

12. **PENALTY PAYMENT DISPUTE:** Jackson County Airport agrees not to contest the legal basis for the penalty assessed pursuant to Paragraph 9 of this Agreement. Jackson County Airport also agrees not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 10 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. Jackson County Airport and the WRD agree this does not preclude the possibility of informal resolution of disputed issues directly between Jackson County Airport and the WRD.
13. **RESOLUTION OF WRD VIOLATION NOTICE:** As part of the successful completion of the terms of this Agreement, the WRD shall deem resolved the March 29, 2013, Notice and close WRD complaint number 13-38-0002-V.
14. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Jackson County Airport shall not conduct any activity within regulated wetlands 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.

15. **FORCE MAJEURE:** Jackson County Airport 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, Jackson County Airport, 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 Jackson County Airport'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 Jackson County Airport's actions or omissions.
16. **FORCE MAJEURE NOTICE:** The Jackson County Airport 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 Jackson County airport to prevent or minimize the delay, and the timetable by which those measures shall be implemented. Failure of Jackson County Airport to comply with the notice requirements above shall render the "Force Majeure" exemption void and of no effect as to the particular incident involved.
17. **ASSIGNMENT OF RIGHTS:** This Agreement shall be binding on the parties, their officers, servants, and employees. In the event that Jackson County Airport sells or transfers any interest in this Property, Jackson County Airport shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Jackson County Airport to complete the work required by this Agreement.
18. **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.
19. **DISPUTE RESOLUTIONS:** 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.
20. **DENIAL OF LIABILITY:** Nothing contained in this Consent Agreement shall be construed as an admission of liability or wrong doing by Jackson County Airport. The WRD and Jackson County Airport agree that the signing of this Agreement is for settlement purposes only.
21. **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.

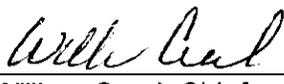
22. **GOVERNING LAW:** This Agreement shall be executed and delivered in the State of Michigan and shall be governed by and construed and enforced in accordance with the laws of the State of Michigan.
23. **TERMINATION OF AGREEMENT:** This Agreement shall remain in full force for a period of at least five (5) complete growing seasons following completion of the planting work for the Wetland Restoration Areas as described in Paragraph 1 of this Agreement. This Agreement may remain in full force for an unspecified time period contingent upon successful completion of all requirements of this Agreement. This Agreement shall terminate only upon written notice of termination issued by the WRD Chief. Prior to issuance of a written notice of termination, Jackson County Airport shall submit a request consisting of a written certification that Jackson County Airport has fully complied with all requirements of this Agreement and has made all payments including stipulated penalties required by this Agreement.
24. **ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement among the parties hereto and contains all 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.

Jackson County Airport

By:  Date: September 23, 20
Kent Maurer, Airport Manager
James E. Shotwell, Jr Board Chair

**Michigan Department of Environmental Quality
Water Resources Division**

By:  Date: October 13, 2014
William Creal, Chief
Water Resources Division

Approved as to form:

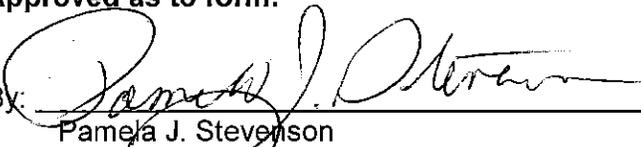
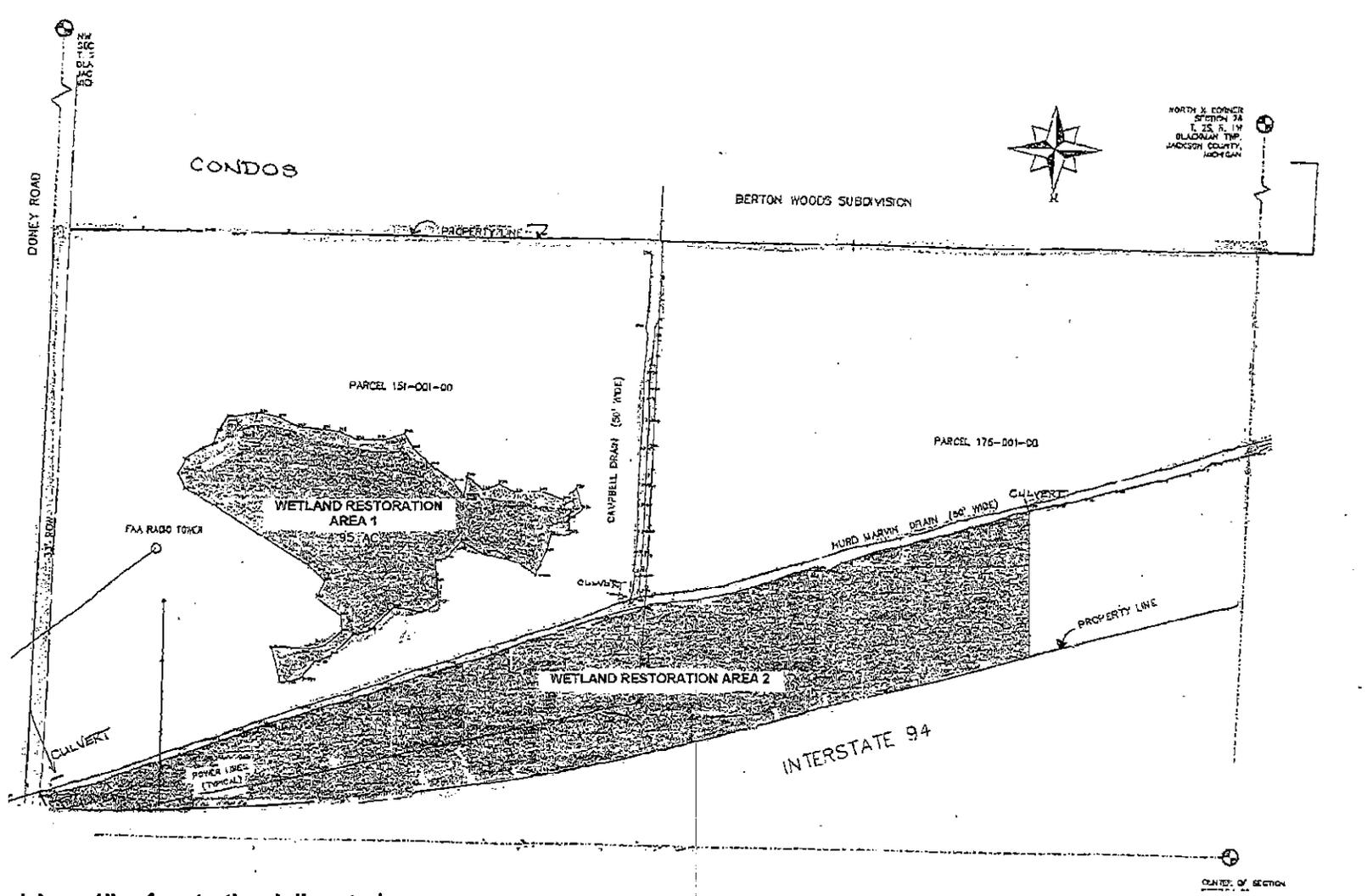
By:  Date: Oct 13, 2014
Pamela J. Stevenson
Assistant Attorney General
Environment, Natural Resources and
Agriculture Division
Department of Attorney General

EXHIBIT A

WETLAND RESTORATION AREA



“Wetland Area 1” refers to the delineated “Wetland Area D” in DEQ#07-38-0002-WA wetland assessment

EXHIBIT B

RESTORATION REPORT REQUIREMENTS

The Permittee shall monitor the wetland restoration for a minimum of five (5) growing seasons in the spring and summer. A monitoring report, which compiles and summarizes observations of the degree of establishment of woody vegetation and general observations of herbaceous vegetation and hydrology during the monitoring period, shall be submitted by Jackson County Airport no later than December 31st of each year following planting. Jackson County Airport shall conduct the following activities and provide the information collected in the monitoring reports:

- A. A summary of tree and shrub survival/mortality including the number and species of surviving trees and surviving shrubs with a goal of 75% survival excluding plants damaged by wildlife.
- B. Photographic documentation of the development of the wetland restoration from permanent photo stations located within the restored wetland. Photos must be labeled with the location, date photographed, and the director taken.
- C. A written summary of data from previous monitoring periods and a discussion of changes or trends based on all monitoring results. This should include an assessment of the survival/mortality of planted trees and shrubs.
- D. A written summary identifying problem areas and potential corrective measures to address them. This may include replacement of dead trees/shrubs and control of invasive species.

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 WRD will determine if the restoration requirements have been met. If they have not been met, the WRD may require subsequent annual monitoring until final approval from the WRD can be granted.