

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

John and Melissa Latner
4360 Fulton Court
Linden, Michigan 48451

WRD40088
File Number: 11-25-0037-V

CONSENT AGREEMENT

This Administrative Consent Agreement (Agreement) is entered into by and between John and Melissa Latner (Mr. and Mrs. Latner) and the Michigan Department of Environmental Quality (DEQ), Water Resources Division (WRD), and shall become effective on the date this Agreement is signed by Mr. and Mrs. Latner 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 10, 2012, the WRD issued a Violation Notice (Notice) pursuant to Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Part 303), to Mr. and Mrs. Latner. The WRD alleged within the Notice that Mr. and Mrs. Latner placed fill material within wetland regulated under Part 303 (Alleged Unauthorized Activities) at Parcel Numbers 06-21-602-014 and 06-21-602-015; known as 4360 Fulton Court, Linden, Genesee County; Fenton Township, T5N, R6E, Section 21 (Property).

The WRD requested within the Notice (11-25-0037-V) that all Alleged Unauthorized Activities on the Property cease and desist and that the area affected by the Alleged Unauthorized Activities be restored.

Mr. and Mrs. Latner owned or had control of the Property and performed the Alleged Unauthorized Activities without a permit under Part 303.

Mr. and Mrs. Latner and the WRD acknowledge that prior to construction and development activities occurring on the Property, there existed approximately 1.6 acres of wetlands regulated by the State of Michigan under Part 303. The WRD has determined that the Alleged Unauthorized Activities resulted in the loss of approximately 0.13 acre of regulated wetland.

The WRD and Mr. and Mrs. Latner agree that full and complete removal of all fill material placed within the 0.13 acres of wetland, particularly along the area of wetland having steeper slopes, may not be feasible and prudent and may result in additional impacts to the wetland. Mr. and Mrs. Latner agree to restore 0.08 acres of the impacted wetland area on the Property to preexisting conditions.

The WRD and Mr. and Mrs. Latner 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 Mr. and Mrs. Latner 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 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 AND MONITORING REQUIREMENTS

1. Mr. and Mrs. Latner shall, by June 1, 2015, complete the restoration of 0.08 acre of wetland (Wetland Restoration Area) identified on the wetland restoration map created by WRD, dated December 16, 2014, attached herein as Exhibit A. Wetland restoration includes the removal of all unauthorized fill material located within the Wetland Restoration Area to the elevation of the original dark organic wetland soils, seeding of the exposed soils with the native emergent wetland seed mix listed on the attached Exhibit B (or WRD approved substitute), and the implementation of soil erosion control measures in compliance with Genesee County permit requirements.

WRD PERMIT REQUIREMENTS

2. Mr. and Mrs. Latner shall, within 30 days of completion of the wetland restoration activities required pursuant to Paragraph 1 of this Agreement and not later than July 1, 2015, provide to the WRD a permit application, application fee, and a site plan for a proposed boardwalk located within the Wetland Restoration Area.
3. Within 30 days of the submittal of application and fee, the WRD shall review the information submitted and notify Mr. and Mrs. Latner, in writing, of any additional information necessary to complete the processing of the application.
4. Within 15 days after receiving the WRD's notice identified in Paragraph 3 of this Agreement, Mr. and Mrs. Latner shall submit the information required by the WRD to complete the application.
5. The WRD shall complete processing of the application in accordance with the statutory requirements of Part 303.
6. If the WRD determines that a permit can be issued, the WRD shall issue the permit to Mr. and Mrs. Latner.
7. Mr. and Mrs. Latner shall commence the activities authorized by the permit within 30 days following issuance of the permit, and complete all required provisions of the permit within 60 days thereafter.

8. If the WRD determines through the application review process that a permit cannot be issued, Mr. and Mrs. Latner reserve the right to contest the denial of the application through the DEQ's administrative hearing process or as otherwise provided by law.

REPORTING AND MONITORING REQUIREMENTS

9. Mr. and Mrs. Latner shall, within five days of completion of the Wetland Restoration Area, provide written notification of completion of the wetland restoration activities to the WRD. This notification shall include photo documentation of the wetland restoration activities and a copy of the invoice for the WRD approved native wetland seed mix.
10. Mr. and Mrs. Latner shall be responsible for monitoring the restored wetland for a period of two (2) years following completion of the wetland restoration activities required in Paragraph 1 of this Agreement. Photo documentation of the development of the Wetland Restoration Area shall be provided annually. All photographs are to be taken after July 15th of each year and submitted to the WRD by not later than September 1, 2015, and September 1, 2016, respectively. The location of each photo taken shall be identified on a map and labeled with the date and direction the photo was taken.
11. Should the WRD determine that the Wetland Restoration Area has failed to demonstrate satisfactory progress towards a self-sustaining wetland system after one (1) complete growing season, or should it fail to become established as a wetland community as designed after two (2) complete growing seasons, Mr. and Mrs. Latner 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, re-grading soils to improve hydrology, reseeding, and/or replanting of wetland plants;
 - D. Submit a copy of the proposed corrective measures to the WRD for review;
12. All notices, applications, reports, and any other submittals, required to be provided by Mr. and Mrs. Latner to the WRD within the provisions of this Agreement shall be addressed, unless otherwise indicated, to:

Justin Smith
Michigan Department of Environmental Quality
Water Resources Division
525 West Allegan Street
Constitution Hall, First Floor, South Tower
Lansing, Michigan 48909

GENERAL PROVISIONS

13. **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-hour advance notice to Mr. and Mrs. Latner prior to inspection of the Property.

14. **SETTLEMENT PENALTY PAYMENT:** Mr. and Mrs. Latner agree to pay an administrative settlement amount of fifteen hundred dollars (\$1,500.00) 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": WRD40088. This payment shall be sent to Accounting Services Division, Cashier's Office for DEQ, P.O. Box 30657, Lansing, Michigan 48909-8157, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing Michigan 48933.

15. **STIPULATED PENALTIES:** Mr. and Mrs. Latner shall pay stipulated penalties of One Hundred Dollars (\$100.00) per day for failure to comply with the provisions of Paragraphs 1 through 14 of this Agreement. Mr. and Mrs. Latner 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.

16. **STIPULATED PENALTY PAYMENT:** To insure timely payments of any stipulated penalties provided in Paragraph 15 of this Agreement, Mr. and Mrs. Latner 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 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, or hand delivered to the Accounting Services Division, Cashier's Office for DEQ, 425 W. Ottawa Street, Lansing, Michigan 48933.

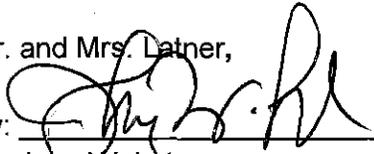
17. **PENALTY PAYMENT DISPUTE:** Mr. and Mrs. Latner agree not to contest the legal basis for the penalty assessed pursuant to Paragraph 14 of this Agreement. Mr. and Mrs. Latner also agree not to contest the legal basis for any stipulated fines assessed pursuant to Paragraph 15 of this Agreement but 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. Mr. and Mrs. Latner and the WRD agree this does not preclude the possibility of informal resolution of disputed directly between Mr. and Mrs. Latner and the WRD.

18. **RESOLUTION OF WRD VIOLATION NOTICE:** As part of the successful completion of the terms of this Agreement, the WRD shall deem resolved the May 12, 2012, Notice and close WRD complaint number (11-25-0037-V).

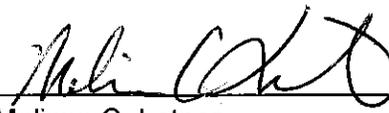
19. **OTHER PERMIT REQUIREMENTS:** With respect to the Property, Mr. and Mrs. Latner shall not conduct any activity within Regulated Wetlands except as provided by this Agreement, or as authorized by separate permit issued by the WRD. This Agreement does not obviate the need to acquire additional state, local, or federal permits as may be required by law. Prior to conducting the wetland restoration work Mr. and Mrs. Latner shall apply for and retain a Soil Erosion and Sedimentation Control permit through the Genesee County Drain Commissioners Office.
20. **FORCE MAJEURE:** Mr. and Mrs. Latner 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 nonoccurrence arising from causes not foreseeable, beyond the control of, and without the fault of, Mr. and Mrs. Latner, 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 Mr. and Mrs. Latner'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 Mr. and Mrs. Latner's actions or omissions.
21. **ASSIGNMENT OF RIGHTS:** This Agreement shall be binding on the parties, their officers, servants, and employees. In the event that Mr. and Mrs. Latner sell or transfers any interest in the Property, Mr. and Mrs. Latner shall retain the obligation to perform any uncompleted work required by this Agreement and shall retain a sufficient interest in the Property necessary for Mr. and Mrs. Latner to complete the work required by this Agreement.
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 wrongdoing by Mr. and Mrs. Latner. The WRD and Mr. and Mrs. Latner 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 two (2) complete growing seasons following completion of the Wetland Restoration Area 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, Mr. and Mrs. Latner shall submit a request consisting of a written certification that Mr. and Mrs. Latner has full complied with all requirements of this Agreement and has made all payments including stipulated penalties required by 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.

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

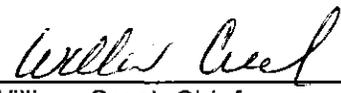
Mr. and Mrs. Latner,
By: 
John W. Latner

Date: 1-20-15

By: 
Melissa C. Latner

Date: 1-20-15

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

By: 
William Creal, Chief
Water Resources Division

Date: 2-9-2015

APPROVED AS TO FORM:

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

Date: 02-09-2015

Exhibit A - Wetland Restoraton Map

2009 Aerial Image



50

Feet



Legend

-  Fill To Remain (0.05 Acre)
-  Wetland Restoration Area (0.08 Acre)



Map By: Justin Smith
Date: December 14, 2014

Emergent Wetland Seed Mix - Exhibit B

This is a wetland seed mix for saturated soils and shallow water in relatively stable wetlands and ponds with good water quality. When established, plants will spread to water depths of up to 12 inches. This seed mix includes at least 8 of 12 native permanent grass, sedge, or rush species and 13 of 19 native forb or shrub species. Apply at a rate of 34.38 PLS pounds per acre.

SCIENTIFIC NAME	COMMON NAME	PLS OZ./ACRE
PERMANENT GRASSES/SEDGES/RUSHES		
<i>Carex cornosa</i>	Bristly Sedge	2.50
<i>Carex lacustris</i>	Common Lake Sedge	0.25
<i>Carex lurida</i>	Bottlebrush Sedge	4.00
<i>Carex stricta</i>	Common Tussock Sedge	1.00
<i>Carex vulpinoidea</i>	Brown Fox Sedge	6.00
<i>Eleocharis palustris</i>	Great Spike Rush	1.00
<i>Juncus effusus</i>	Common Rush	1.00
<i>Leersia oryzoides</i>	Rice Cut Grass	3.00
<i>Scirpus acutus</i>	Hard-stemmed Bulrush	2.50
<i>Scirpus fluviatilis</i>	River Bulrush	1.00
<i>Scirpus pungens</i>	Chairmaker's Rush	3.00
<i>Scirpus validus</i>	Great Bulrush	6.00
	Total	37.25
TEMPORARY COVER		
<i>Avena sativa</i>	Common Oat	380.00
<i>Lolium multiflorum</i>	Annual Rye	100.00
	Total	480.00
FORBS		
<i>Acorus calamus</i>	Sweet Flag	0.50
<i>Ailisma spp.</i>	Water Plantain (Various Mix)	2.00
<i>Asclepias incarnata</i>	Swamp Milkweed	1.50
<i>Cephalanthus occidentalis</i>	Buttonbush	6.00
<i>Decodon verticillatus</i>	Swamp Loosestrife	0.50
<i>Eupatorium maculatum</i>	Spotted Joe-Pye Weed	0.50
<i>Hibiscus spp.</i>	Rosemallow (Various Mix)	4.00
<i>Iris virginica</i>	Blue Flag	6.00
<i>Lobelia cardinalis</i>	Cardinal Flower	0.25
<i>Lobelia siphilitica</i>	Great Blue Lobelia	0.25
<i>Lycopus americanus</i>	Common Water Horehound	0.25
<i>Mimulus ringens</i>	Monkey Flower	1.00
<i>Peltandra virginica</i>	Arrow Arum	18.00
<i>Penthorum sedoides</i>	Ditch Stonecrop	0.50
<i>Polygonum spp.</i>	Pinkweed (Various Mix)	0.50
<i>Pontederia cordata</i>	Pickeral Weed	10.00
<i>Sagittaria latifolia</i>	Common Arrowhead	2.00
<i>Sparganium eurycarpum</i>	Common Bur Reed	6.00
<i>Verbena hastata</i>	Blue Vervain	1.00
	Total	83.75

Seed Mix Sourced By:
 Native Plant Nursery
 128 Sunset Drive Walkerton
 Indiana, 46574