

From: Ross Hammersley [<mailto:ross@envlaw.com>]

Sent: Friday, June 03, 2016 1:31 PM

To: Building; Planning; Carlisle, Ben; Crawford, Tom

Cc: Postema, Stephen

Subject: Nixon Farms Development Issues

Good afternoon,

My name is Ross Hammersley, and I am counsel to the Nixon Area Alliance, a group of Ann Arbor citizens living in the immediate vicinity of the Nixon Farms North and South development projects along Dhu Varren and Nixon Roads in northeastern Ann Arbor. The purpose of this letter is two-fold.

First, if you were not already aware, you should be advised that the Permit granted by the Michigan Department of Environmental Quality on March 3rd of this year (Permit No. 14-81-0040-P) to the applicant/permittee, Toll Brothers, Inc., is the subject of contested case proceedings before the Michigan Administrative Hearing System and Administrative Law Judge Daniel J. Pulter. A copy of the petition as filed is attached, as are copies of the Motion for Preliminary Injunction and Motion for Immediate Site Inspection by Environmental Expert that were filed this week after the permittee began clearing vegetation on site.

Second, according to several members of my client group, the site preparation/clearing on the Nixon Farms South site that has been initiated appears to have included portions of the site that were designated for natural features protection in violation of Section 5:128 of the Ann Arbor City Code, potentially including landmark trees and wetlands. My clients are requesting that the city undertake a thorough review of the city's conditional approval granted to the permittee for its work on these sites, and independently verify whether natural features have been destroyed in violation of the city code and/or the permittee's approved site plans.

Please confirm receipt of this message at your earliest convenience. Given that site clearing is ongoing, time is of the essence in reviewing the issues related to this project and reaching a determination as to the potential violation of city code and the permittee's conditional approval(s).

If you have any questions or concerns, or would like to speak with me about this matter, please feel free to call and/or email at your convenience.

Thank you,

Ross A. Hammersley

Olson, Bzdok & Howard, P.C.

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Traverse City Office - (231) 946-0044

Frankfort Office – (231) 352-4412



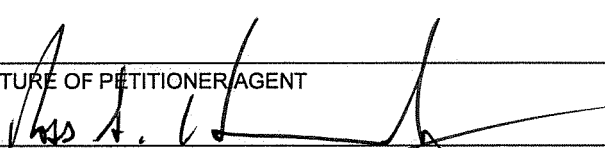
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY
PETITION FOR CONTESTED CASE HEARING

Permit or Application No: (On permit or application as assigned by MDEQ)
14-81-0040-P

The procedural authority for a contested case hearing is the Michigan Administrative Procedures Act, 1969 PA 306, as amended; MCL 24.201 et seq. Information requested on this form may be provided in an alternative, written format or additional pages may be attached.

<input checked="" type="checkbox"/> PETITIONER'S NAME	or	<input type="checkbox"/> AGENT'S NAME
Nixon Area Alliance		
STREET ADDRESS 3347 Elsinore Court		
CITY	STATE	ZIP CODE
Ann Arbor	MI	48105
TELEPHONE No. (231) 946-0044		
E-MAIL ADDRESS ross@envlaw.com		

MAILING ADDRESS (If different from street address) Olson Bzdok & Howard		
420 E. Front Street		
CITY	STATE	ZIP CODE
Traverse City	MI	49686

Statement of Authority:	
I petition a contested case hearing be initiated under the authority of:	
<input checked="" type="checkbox"/> Part 303 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, MCL 324.101 <i>et seq.</i>	
<input type="checkbox"/> Part _____ of the Public Health Code, 1978 PA 368, as amended, MCL 333.1101 <i>et seq.</i>	
<input checked="" type="checkbox"/> Other statute: See Attached Addendum	
<i>{Identify statute by popular name, the public act year and number, MCL, and if applicable, the part of the statute}</i>	
<input type="checkbox"/> Administrative Rule, R _____	; Title: _____
<input type="checkbox"/> Order No. _____	; Title: _____
Statement of matters asserted, including the site location and other pertinent facts: See Attached Addendum	
Petitioner's relationship/interest to the activity or proposed project: See Attached Addendum	
Relief sought by Petitioner: See Attached Addendum	
SIGNATURE OF PETITIONER/AGENT 	DATE January 15, 2016

Submit this completed petition and attachments to:
 MICHIGAN ADMINISTRATIVE HEARING SYSTEM
 OTTAWA BUILDING, SECOND FLOOR
 611 WEST OTTAWA STREET
 P.O. BOX 30473
 LANSING, MI 48909
 517-335-4226

NOTICE:
 COPY OF MDEQ'S FINAL ACTION ON AN APPLICATION OR PERMIT **MUST BE** ATTACHED TO THIS OR ANY ALTERNATIVE WRITTEN PETITION

ADDENDUM TO PETITION FOR CONTESTED CASE

The following is the Addendum to Petition for Contested Case by the Nixon Area Alliance (NAA). (This Statement is attached to and supplements the Petition for Contested Case Hearings form as filled out and signed by undersigned counsel.)

PETITIONERS:

Nixon Area Alliance & Members
3347 Elsinore Court
Ann Arbor, MI 48105

ATTORNEYS FOR PETITIONERS:

Ross A. Hammersley
Katherine E. Redman
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Petitioners
420 East Front Street
Traverse City, MI 49686
(231) 946-0044
ross@envlaw.com
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STATEMENT OF AUTHORITY:

I petition a contested case hearing be initiated under the authority of NATURAL RESOURCES and ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, as amended, MCL 324.101 *et seq.*, Part 301 (MCL 324.30101, *et seq.*) and Part 303 (MCL 324.30303, *et seq.*), including but not limited to MCL §§ 324.30304; 324.30306; 324.30307; 324.30311(1), (2), (4), and 4(b); 324.30319(2), and the rules promulgated thereunder, including but not limited to Michigan Administrative Code, R. 281.922a(2)(b), 281.922a(3), 281.922a(a) 281.299b(b), 281.299a(6)(b), 281.922a(8), 281.922a(11), and R. 299.1021 *et seq.* (ESA or Threatened Species); and MCL 324.1701, *et seq.* (Michigan Environmental Protection Act or MEPA).

STATEMENT OF MATTERS ASSERTED, INCLUDING THE SITE LOCATION AND OTHER PERTINENT FACTS:

PARTIES

1. Petitioner Nixon Area Alliance (NAA) is a not-for-profit corporation incorporated in the State of Michigan with its resident office located at 3347 Elsinore Court, Ann Arbor, in Washtenaw County, Michigan, and is a coalition of individuals and organizations working cooperatively to maintain and preserve the environmental, recreational and community quality of

northeast Ann Arbor and the surrounding areas, and, in particular, protecting and conserving its environmental and natural resources.

2. The Michigan Department of Environmental Quality (DEQ) is the administrative agency responsible for wetlands permitting in the state of Michigan under MCL 324.30301 *et seq*, the Wetland Protection Act ("Part 303").

3. Upon information and belief, Toll Brothers, Inc. is an out-of-state corporation, with an office at 29665 William K. Smith Drive, Suite B, in New Hudson, Michigan ("Applicant" or "Respondent").

THE PROPERTY

4. The two properties that are the subject of this appeal are situated in northern Ann Arbor along Nixon Road, immediately to the north and south of Dhu Varren Road. The two parcels together comprise just under 110 acres of property: "Nixon Farm South" (the property to the south of Dhu Varren Rd. and west of Nixon Rd.) is roughly 40 acres; "Nixon Farm North" (the property to the north of Dhu Varren Rd. and west of Nixon Rd.) is roughly 69.2 acres. Except when referred to individually by their Nixon Farm "North" or "South" designations, these parcels will hereinafter be referred to as "the Property(ies)."

5. The activities proposed for these properties are sought by Toll Brothers, Inc. (the "Applicant"), who has ownership and/or control over all or a portion of the properties by way of an agreement with the Trustee of the Betty N. Spurway Trust Agreement.

6. Portions of the Property were previously used for agricultural purposes, and other significant portions have remained undeveloped as forests, wetlands, forested wetlands, ponds, and other natural features. The Property is situated in the middle of an otherwise densely developed residential area, and is one of the last remnants of local ecological richness and biodiversity in the area.

7. These wetlands and their connected groundwater aquifer(s) and creek tributaries provide critical ecosystem services such as protection from flooding and storm surges, water catchment and purification, maintenance and protection of wildlife, recreation, research and more.

8. These wetlands are easily disrupted yet essential to the integrity of the critical ecosystem services because the wetlands hold water near the soil surface and support a diverse array of plant and animal species found nowhere else in the dunes.

9. The wetlands can support a diversity of plant communities (a number of species known to be present in the immediate area) and animals (particularly birds), and provide suitable habitat for a variety of federal and state endangered, threatened, and special concern species, including but not necessarily limited to rare plant species such as Wild Black Currants, Great Blue Lobelia, James Sedge, and Swamp Milkweed, and rare animal species such as Wood Frogs,

Spring Peepers, Grey Tree Frogs, Northern Leopard Frogs, as established in field surveys conducted by the Michigan Natural Features Inventory (MNFI) program.

10. The wetlands on the Property also offer recreational and aesthetic value because they are situated amidst densely packed residential developments and along the tributaries of Traver Creek.

PROPOSED PROJECT AND DEQ APPLICATION

11. The Applicant originally filed a permit application in March 2015 to fill portions of the wetlands on the Property for the construction of a residential development in and bisecting wetlands under Parts 301 and 303 of the Natural Resources and Environment Protection Act, MCL 324.30101, et seq. and MCL 324.30301, et seq. ("Application").

12. According to the Public Notice issued by the DEQ, the project proposes to construct a multifamily residential development by undertaking the following on-site activities: filling roughly 0.43 acres of wetland with approximately 2,271 cubic yards of fill; dredging approximately 536 cubic yards from 0.14 acres of wetland; enclosing a total of 170 linear feet of two separate unnamed stream tributaries of Traver Creek for road crossings utilizing a 42-inch and 36-inch diameter reinforced concrete pipe; constructing an 8-foot wide prefabricated pedestrian bridge to span approximately 20 feet over an existing stream; constructing 6 separate storm water detention basins for pretreatment of storm water; directionally boring and/or open trenching under wetlands in eleven locations.

13. The Applicant proposes to construct 272 new townhomes on the Properties.

14. The Applicant engaged with Traffic Engineering Associates, Inc. in 2014 for the completion of Traffic Impact Study(ies) to predict and plan for the expected traffic growth volumes on Nixon and Dhu Varren Roads, as well as surrounding arteries, as a result of the construction of the Nixon Farms development project.

15. In the Applicant's official Site Plans for Nixon Farms North and Nixon Farms South as submitted to the City of Ann Arbor, the Applicant states that the new construction "will have traffic impacts" that will generate more than 50 vehicle trips per peak hour, with 275 peak hour trips in the morning and 270 in the afternoon on area roads (**Exhibit 1 & 2**).

16. The Applicant's site plans show an expansion and widening of Nixon and Dhu Varren Roads onto portions of both Properties as a direct result of the increase in traffic that is anticipated to be caused by the completion of the Applicant's proposed project.

17. The Applicant's wetlands consultant, King & MacGregor Environmental, Inc., prepared a wetlands delineation for both Properties showing Part 303 regulated wetlands on either side of Dhu Varren Road towards the eastern end of said road, including a pond on the northern side. There are also wetlands and forested areas immediately to the north and south of Dhu Varren Road along the western side of Nixon Road.

18. The expansion and widening of these roads caused by the Applicant's proposed project will require the destruction of the wetlands, forests, and ponds on the Properties.

19. The Applicant has improperly withheld this information from its Part 301 and Part 303 Permit Application.

20. The Applicant's Site Plans state that "It is the Applicant's understanding that required improvements to the Nixon/Dhu-Varren intersection will be completed under a separate project."

21. Although the purpose of the development is stated to include home sites and internal access roads, the impact of the approval of this plan to construct these homes will be to directly cause traffic increases requiring and expansion of the Nixon and Dhu Varren Road intersection which causes destruction of and/or unacceptable impacts under Part 301 and Part 303.

22. The impacts that will result from this project on these wetlands were not included in the Application, nor in the DEQ's summary of potential impacts to the Property or the wetlands.

DEQ Application Review

23. The Application was received by the DEQ on March 4, 2015, and was assigned DEQ File Number 14-91-0040-P. A Public Notice was issued by the DEQ on March 31, 2015.

24. The DEQ solicited a request from the Applicant for an extension of the permit application processing period in May of 2015, which the Applicant subsequently submitted, along with certain revisions to the plans to the DEQ in June.

25. Upon information and belief, no further documentation was submitted to the DEQ by the Applicant until November 18, 2015.

26. In that November 18, 2015 submission, the Applicant provided the DEQ with a signed draft permit consisting of the Applicant's "complete understanding of the draft permit and all of its associated terms and conditions."

27. The DEQ stamped the Applicant's submission of the draft permit as received on November 25, 2015.

28. Upon information and belief, as of the date of this Petition the DEQ has not taken a final, official action as to the Permit Application, outside of accepting information and granting the permit processing period extension.

29. Based on the foregoing, and as may be further illuminated through proceedings before the department as part of this Contested Case, the materials comprising the Application as submitted and supplemented by the Applicant are incomplete, and contain incorrect information

because the Applicant has improperly requested what amounts to a piecemeal DEQ approval for only a portion of its development affecting wetlands on the Properties.

30. The Applicant has improperly submitted an Application that so narrowly defines the purpose of the project as to limit a complete analysis of whether the activities are primarily dependent upon being located in the wetland and whether there are feasible and prudent alternatives to the project as proposed that will not result in an unacceptable disruption to the wetlands and other ecological resources, or are otherwise contrary to law.

31. The Application does not meet Part 303 standards because it is not in the public interest; there are feasible and prudent alternatives; it would result in an unacceptable disruption to ecological resources; and the proposal was not consistent with law.

32. The Application does not comply with the Michigan Environmental Protection Act, MCL 324.1701, *et seq.*

Claims Asserted

33. Petitioner is aggrieved by the decision of the DEQ to allow the Applicant to improperly and unlawfully segment the project so as to prevent a meaningful review of all wetlands impacts caused by the proposed project under Part 303 and requests a formal hearing on the matter, pursuant to MCL 324.30319.

34. The Applicant failed to submit a complete application under MCL 324.1303, 324.1305, and 324.30307 and Michigan Administrative Code (MAC) R. 281.922 and 281.922a, such that the DEQ erred in determining that the application was complete and that a Part 303 permit is not required, for reasons included but not limited to:

35. The Applicant failed to “completely define the purpose for which the permit is sought, including all associated activities” as required by MAC R 281.922a.

36. The proposed project will result in regulated activity in wetlands regulated by Part 303 for a number of reasons, including:

a. The Applicant has narrowly defined the scope of the project in such a way that precludes a review of the project’s impacts on regulated wetlands on site, at least in part because it did not take into account the effects of the voluminous increase in traffic that will result from the development, causing expansion of area roadways into regulated wetlands.

b. The DEQ has proceeded with the processing of the Application long after the extended application processing period has expired.

c. The DEQ has processed the Application without object to the improperly narrow scope of the proposed project’s impacts on regulated wetlands on site.

d. The Application does not take into account the full extent of the activities required by the purpose of the permit.

37. The DEQ's decision and review process failed to comport with its responsibilities to administer Part 303 consistent with Section 404 of the Federal Water Pollution Control Act, 33 USC 1344, 33 USC sections 1251 et. seq, including the guidelines established under CWA section 404(b)(1), under 33 U.S.C. § 1344(h)(1) (2011); 40 C.F.R. §§ 230.2(a)(2), 233.23(a) (2013).

38. The Applicant's project, as proposed, will or is likely to pollute, impair or destroy the natural resources of the State of Michigan.

39. The Applicant failed to submit and DEQ failed to consider and determine a sufficient evaluation or consideration of likely environmental effects and feasible and prudent alternatives as required by Part 17, MCL 324.1701 et seq., according to common law of the environment.

PETITIONER'S RELATIONSHIP/INTEREST TO THE ACTIVITY OR PROPOSED PROJECT

40. NAA and its members are uniquely invested in the area surrounding Nixon Farms, and the Property is an essential component to the health of the various unnamed tributaries of Traver Creek and the surrounding ecosystems.

41. Since its formation, the members of NAA have remained committed to and focused on ensuring the protection of the environmental, recreational and community quality of northeast Ann Arbor and the surrounding areas, and, in particular, protecting and conserving its environmental and natural resources.

42. NAA members represent a wide variety of stakeholders with varying interests in the Properties, including adjacent property owners, homeowners, and local business owners; its members are active participants in the area homeowners' and condominium associations, as well as in the municipal proceedings of the City of Ann Arbor, Ann Arbor Township and the neighboring communities, and strongly support conservation of natural resources in the area.

43. Importantly, there are several members of NAA who own property directly adjacent to the Properties that form the subject matter of this Application. Other members of NAA live and/or own property in the immediate vicinity of the proposed project, and will be negatively impacted by the increase in traffic, degradation and destruction of wetlands and natural features in the area. The use and enjoyment of the property of all members of NAA is likely to be significantly detrimentally affected by the proposed project.

44. NAA members include the following:

- Jane Klingsten: Board member of the NAA, Chair of the Ann Arbor Hills City Relations Committee, former Arbor Hills Condominium Association Board member and President, and owner of property (for 16 years) in the immediate vicinity of the project at 3347 Elsinore Court who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Kamala Meader: Board member of the NAA, member of the Ann Arbor Hills City Relations Committee, former Arbor Hills Condominium Association Board member and President, and owner of property (for 20 years) in the immediate vicinity of the project at 3149 Dunwoodie Road who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Wendy Carman: Board member of the NAA, former long-time Treasurer of the Orchard Hills Maplewood Homeowners Association, and property owner in the immediate vicinity of the project at 2340 Georgetown Blvd. who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Lakshmi Raman: adjacent property owner at 2378 Hickory Point Drive, and Board member of the NAA.
- Karen Yamada: adjacent property owner at 3152 Eagle Court, and member of the Board of Directors of the Foxfire Condominium Association.
- Xiaoping Shen: adjacent property owner at 2976 S. Foxridge Court.
- William Quinn: adjoining property owner and President of the Board of Directors of the Barclay Park Condominium Association.
- John Cederquist: President of the Orchard Hills Maplewood Homeowners Association and owner in the immediate vicinity of the project (for 32 years) at 2145 Ardenne Drive who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Amy Seetoo: Board member of the Orchard Hills Maplewood Homeowners Association, and owner of property (for 21 years) at 3111 Cedarbrook Road who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Collin Mark Ross: Member of the Arbor Hills City Relations Committee, former President of the Arbor Hills Condominium Association, and owner of property (for 17 years) at 3409 Strand Court who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Sheila Jensen and Hans Herfurth: adjoining property owners at 2950 Lakehurst Court.
- Valerie and Robert Powell: adjoining property owners at 2940 Lakehurst Court.
- Taryn and Justin Gal: adjoining property owners at 2930 Lakehurst Court.
- Wei Yi: owner of property in a neighborhood directly adjacent to the proposed project at 2416 Tamarack Court who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.
- Carol Rycus: longtime owner of property in a neighborhood directly adjacent to the proposed project at 2726 Winter Garden Court who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.

- Usha Jindal: Vice President of the Arbor Hills Association Board of Directors and owner of property at 3219 Kilburn Park who will be negatively impacted by the wetlands destruction, traffic impacts, and in the use and enjoyment of her property.

45. All of the members described above have real property, environmental, and community-based interests in Northeast Ann Arbor that will be affected by the DEQ's decision, including but not limited to:

- Environmental effects due to the location of the construction in the wetlands along Dhu Varren and Nixon roads, including irreparable damage to the pond and wetlands that are on the Nixon Farms properties and have been included in the Applicant's own wetlands delineation without any indication that those wetlands and their connected ecological systems will be damaged; degradation of the headwaters and tributaries of Traver Creek; destruction and degradation of wetlands habitat essential for survival of species in the area, damage from residential pollution such as pesticides and road salt, and increased risk of invasive species.
- Effects of new residential homes, road, and the expansion of the adjacent roads and intersection area on traffic, light, noise, and character of the area.
- Viewshed effects from construction of densely packed homes.
- Effects on recreation activity in and around the headwaters and tributaries of Traver Creek and the parks and natural areas in the vicinity thereof.
- Property value and tax impact for neighboring properties and properties throughout the community.

46. In light of the many potential effects of the development, and the variety of very real interests, Petitioner and its members will unquestionably be affected by the DEQ decision to approve a Part 303 permit without fully evaluating the impacts of the true scope of the project and the potential for feasible and prudent alternatives thereto under Part 303 and Part 17. Given the abundance of reasonable and feasible alternatives available on ~110 acre property that would not be so damaging to regulated wetlands, it is of crucial importance that the DEQ require a full and complete evaluation thereof as required by Part 303.

47. An analysis of the full scope of the project and all of the feasible and prudent alternatives involved therewith will have significant a significant effect on the all of the adjoining property owners that are members of the NAA, as well as other members of the NAA. The NAA was formed to protect the environmental assets of this community, its members consist of adjoining property owners, hikers, birders, and local business owners, among many other things, all of whom care deeply about the health and welfare of the Northeast Ann Arbor ecological and human community. There is no question that the NAA is aggrieved by the action, or nonaction, of the DEQ.

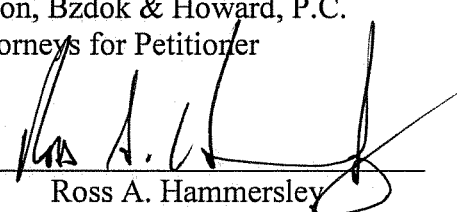
RELIEF SOUGHT BY PETITIONER

Petitioner respectfully request this Honorable Tribunal reverse in accordance with law the DEQ's decision that Applicant is not required to define the full scope of its project nor to analyse the feasible and prudent alternatives thereto as required by Part 303, and/or alternatively find that the project violates Part 17, and grant or order such other relief as is authorized by law, including costs and attorney fees.

Olson, Bzdok & Howard, P.C.
Attorneys for Petitioner

Dated: January 15, 2016.

By



Ross A. Hammersley

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of

Nixon Area Alliance on the Permit
Issued to Toll Brothers, Inc.

File No.: 14-81-0040-P

Part: 303, Wetlands Protection

Agency: Department of Environmental
Quality

Case Type: Water Resources Division

Presiding: HON. DANIEL J. PULTER, ALJ

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**PETITIONER'S MOTION FOR IMMEDIATE SITE
INSPECTION BY ENVIRONMENTAL EXPERT**

June 1, 2016

Petitioner, the Nixon Area Alliance, through its attorneys, OLSON, BZDOK & HOWARD, PC, and in accordance with Michigan DEQ Office of Administrative Hearings Contested Case and Declaratory Ruling Procedures, Rules 324.56 and 324.59, hereby moves that Petitioner's environmental expert, Dr. Christopher P. Grobbel, be immediately permitted to enter upon Intervenor's properties (both Nixon Farms South and Nixon Farms North) for the purpose of viewing and inspecting the wetland vegetation, soils, and other characteristics for the purpose of developing a wetland assessment.

In support of this Motion, Petitioner submits the following:

1. Petitioner makes this request based on the currently favorable conditions for obtaining accurate data and completing a thorough evaluation and delineation of the wetland portions of both the Nixon Farms "North" and "South" site(s). *See* Affidavit of Christopher Grobbel, Ph.D. (*Exhibit 1*). Petitioner believes conducting a wetland delineation at this time of year will provide the most precise identification possible of the vegetative species, soil and hydrologic characteristics on the sites, will greatly assist in the fact-finding of this Tribunal, and may lead to a narrowing of the issues on which testimony would be necessary at the contested case hearing.

2. An important element of this contested case relates to the contents of and conclusions reached in the 2013 wetlands delineation performed on behalf of Intervenor Toll Brothers, as well as the resulting impacts on the sites' wetlands arising out of the widening of roads adjacent to and serving the project sites, the improper segmentation of the effects of said road-work from the Intervenor's wetlands permit application and associated materials, and the corresponding failure of the Intervenor and the Respondent to analyze the presence of feasible and prudent alternatives in conjunction with said development activities as proposed.

3. Part 303 specifically requires the DEQ to consider the numerous potential impacts caused by the potential loss of a wetland as provided in MCL §324.30302(1)(b), including the vitally important question for these particular projects in this location, which is whether the loss of wetlands would deprive the people of “(i) [f]lood and storm control by the hydrologic absorption and storage capacity of the wetland.” Furthermore, Part 303 requires the DEQ to address whether “[t]he proposed activity is primarily dependent upon being located in the wetland,” and whether a “feasible and prudent alternative does not exist.” MCL §324.30311(4); *see also* MICH. ADMIN. CODE R. 281.922a(1)(a).

4. Obtaining a wetlands assessment outside of the three-year old delineation provided by the Intervenor in this matter is important for purposes of developing the record in this matter so as to provide a wetland evaluation and alternatives analysis that is from an outside source other than the Intervenor, the permit applicant.

5. An on-site inspection by Petitioner’s highly-qualified environmental expert would be the most efficient method by which to obtain this vital data and to provide this Tribunal with as accurate an analysis of the site(s) in question as is currently possible.

For these reasons, Petitioner respectfully requests that the Administrative Law Judge order Intervenor to grant immediate, temporary access to the subject properties¹ to Petitioner’s environmental expert for the purpose of performing a wetlands delineation and analysis as soon as is practicable and at a time to be mutually agreed-upon by the parties, but in no case later than June 30, 2016.

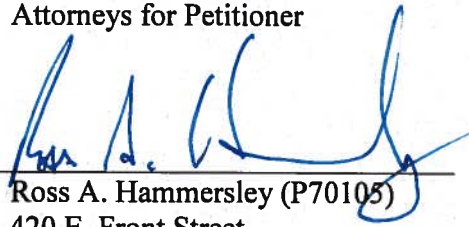
[signature page follows]

¹ The subject properties being “Nixon Farms North” and “Nixon Farms South”, as provided on *Exhibit 2* to this motion, which is a site location map apparently prepared by or on behalf of the Intervenor in this matter.

Respectfully Submitted,
OLSON, BZDOK & HOWARD, P.C.
Attorneys for Petitioner

Dated: June 1, 2016.

By:



Ross A. Hammersley (P70105)
420 E. Front Street
Traverse City, MI 49686
(231) 946-0044
ross@envlaw.com

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of
Nixon Area Alliance
_____ /

File No. 14-81-0040-P
Hon. Daniel J. Pulter, ALJ

AFFIDAVIT OF CHRISTOPHER P. GROBBEL, Ph.D.

I, Christopher P. Grobbel of Grobbel Environmental & Planning Associates, LLC, being sworn, state the following:

1. I hold a Ph.D. from Michigan State University, Resource Development Department in the field of Environmental Policy & Law. I also obtained Masters and Bachelor of Science degrees from Michigan State University emphasizing the study of environmental science, hydrology and forestry. My curriculum vitae is attached to this affidavit as **Exhibit A**.

2. I have worked for the Michigan Department of Natural Resources, Gaylord and Lansing offices, for the Land & Water Management and Environmental Response Divisions, including liaison with the Department of Attorney General and specializing in environmental quality assessment.

3. I have worked as an environmental professional for 25 years, which has included ecological assessment, evaluation of cumulative environmental impact, wetland science, hydrology/hydrogeology, and community planning and zoning. I have designed and taught courses in environmental law and policy at Michigan State University since 1992.

4. I have recently served and/or currently serve as the professional planner for Michigan townships including but not limited to Norman Township, Manistee County; Bay and Norwood Townships, Charlevoix County; Elmwood Township, Leelanau County; Torch Lake Township, Antrim County; Edwards Township, Ogemaw County; Acme and Mayfield

Townships, Grand Traverse County; Redmond and Friendship Townships, Emmet County; and Ogemaw County.

5. I have had ongoing training in hydrologic study and wetland delineation, including many courses at the University of Wisconsin and Northwest Michigan Council of Governments, and am a member of the Society of Wetland Scientists, Michigan and National Association of Environmental Professionals, Michigan Society of Planning, and the National Ground Water Association.

6. I have previously been qualified as an expert in wetland science, wetland characterization and delineation, environmental quality assessment, cumulative environmental risk assessment and management, MDNR/MDEQ policies and procedures, hydrology/hydrogeology, and geomorphology by numerous Michigan courts.

7. I have visited the properties at issue in the above-captioned case, and have begun a review of the site plans and documentation related to the permit granted by the MDEQ (File #14-81-0040-P) for the proposed development of Intervenor, Toll Bros., Inc., as well as the transportation infrastructure studies and plans for the intersection of Nixon and Dhu Varren Roads in north-east Ann Arbor.

8. To date, the Intervenor, Toll Bros., Inc., has not granted me access to their property to conduct a full ecological site assessment. However, I have visited the site vicinity through adjoining public property and permitted entry on adjoining private property.

9. Through independent analysis and direct observation, based on (i) my recent personal observations of the subject properties from the road right-of-ways along Nixon and Dhu Varren Roads and the adjacent surrounding properties to which I was granted access, and (ii) my initial review of documents relating to the Intervenor's proposed development (including, but not

limited to, original and amended site plans, wetlands permit application materials, city roadway infrastructure planning documents, and the Nov. 15, 2013 wetlands boundary map apparently created for/on behalf of the Intervenor by King & MacGregor Environmental, Inc. (#13219)), I have preliminarily concluded that further, detailed inquiry into the following issues is necessary in order to properly assess the conditions of the subject properties from an environmental/ecological perspective:

- a. Extent of Wetlands – It appears that the full extent of wetlands boundaries on the property is insufficiently quantified in the Intervenor’s materials and has not been adequately delineated thereupon;
- b. Storm Water Management – The surface water and groundwater in the vicinity of the subject properties, combined with the storm water management design elements and wetlands mitigation areas as set forth on the Intervenor’s site plans/materials appear to indicate severe deficiencies in the ability of the site to manage storm water in the manner suggested by said plans/materials; and
- c. Endangered/Threatened Species – Several endangered/threatened plant and insect species are known to be present on properties in the immediate vicinity of the proposed development sites, and appear likely to be present on-site. Furthermore, the site appears to be attractive habitat for certain listed mammals and insects that are also known to be in the surrounding area.

10. In order to fully assess these and other potentially important ecological inquiries, it is important for me to gain temporary access to the Nixon Farms North and Nixon Farms South properties proposed for development by the Intervenor. Temporary access to said

properties would allow for vegetative identification, wetlands mapping and soils analysis, as well as wildlife and insect observation and identification when possible.

11. From the perspective of assessing the wetlands and storm water management issues in particular, as well as for identification of listed plant species of concern, a site visit in the near future (before the end of June) would be ideal.

12. State and federal regulations generally define wetlands as areas that are inundated or saturated by surface or groundwater at frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

13. Required methods to determine the presence of and/or to delineate the extent of wetlands rely upon the inventory of upland and wetland plants, assessment of soil conditions, and an investigation of near surface hydrology.

14. Specifically, ideal conditions exist in early summer to inventory and assess on-site wetland plant species, i.e. early in the “phenological” period of on-site wetland vegetation.

15. “Phenology” indicates the time frame for the seasonal life cycle of plants (especially plant flowering), and other biological phenomena.

16. It appears the previous wetland assessment/delineation was completed in the fall of 2013 (i.e., by King and MacGregor Environmental, Inc., as agent for Toll Brothers, Inc. on November 15, 2013).

17. Wetland delineation methods to assess wetland hydrology require a determination that an area in most years is inundated or saturated for at least 5% (in consecutive days) of the growing season.

18. "Growing season" is defined as that portion of the year when soil temperature at 20 inches below the ground surface is above biological zero, i.e. 41° F, 5° C.

19. For these reasons, it is ideal to assess wetland conditions at a given location in Washtenaw County in the early summer.

20. Due to the strong likelihood of irreversible damage to presently existing natural site conditions that would preclude the completion of an appropriate ecological site assessment on the property(ies), any disturbance of the soils, including, but not necessarily limited to, site preparation, grading, staging of vehicles, and excavation should be precluded entirely, or at least delayed until such time as the site visit and assessment has been completed.

21. The Intervenor's development will require dredging and/or filling of wetlands, road building, and construction of housing development units, all of which would result in significant habitat destruction.

22. For these reasons, I believe the Intervenor's development, as presently constituted, risks the pollution, impairment, or destruction of natural resources.

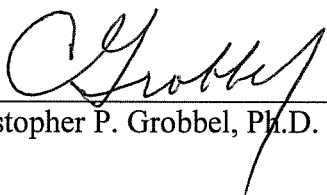
23. This affidavit is made on my own personal knowledge.

24. If sworn as a witness, I can competently testify to the facts in this Affidavit.

The above is true to the best of my knowledge, information and belief.

Further Affiant sayeth not.

Dated: May 20, 2016.

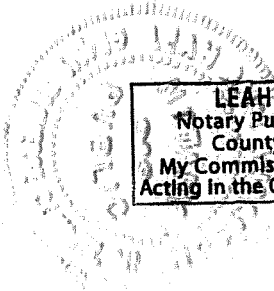


Christopher P. Grobbel, Ph.D.

Grand Traverse COUNTY
STATE OF MICHIGAN

)
) ss.

Subscribed and sworn to before me on the ^{LA} ~~27~~²⁸th day of May, 2016, by Christopher P. Grobbel, Ph.D



LEAH ANN ANDERSON
Notary Public, State of Michigan
County of Grand Traverse
My Commission Expires Apr. 7, 2021
Acting in the County of Grand Traverse

Leah Ann Anderson
Leah Ann Anderson, Notary Public
Grand Traverse County, Michigan
My commission expires: April 7, 2021
Acting in Grand Traverse County

CHRISTOPHER P. GROBBEL

EDUCATION

Ph. D. Environmental Policy and Law, Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1998.

M.S. Environmental Policy and Law / Hydrogeology - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1986.

B.S. Environmental Science / Forestry with High Honor - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1983.

PROFESSIONAL EXPERIENCE

Principal/Senior Associate – Grobbel Environmental & Planning Associates, Traverse City, Michigan.

1998 to Present Founder and president of the environmental consulting and land use planning firm, Grobbel Environmental & Planning Associates. Project experience includes watershed management and protection planning; community master planning, police power and zoning ordinance development; land use and environmental planning; ecological assessment; wetland determination, restoration and delineation; soil/groundwater investigation and remediation; risk assessment, management and communication; brownfield redevelopment; innovative stormwater treatment system design and construction; litigation support and expert witness; and all aspects of business development, media relations, financial management, marketing and administration.

Assistant/Adjunct Professor – Department of Community Sustainability/CARRS/Resource Development Department, College of Agriculture & Natural Resources, Michigan State University, Traverse City and East Lansing, Michigan.

1992 to Present Design and teaching of college undergraduate courses entitled: CSUS 425 Environmental Impact Assessment; CSUS 465 Environmental and Natural Resources Law; CSUS 200 Introduction to Sustainability; CSUS 320 Environmental Planning and Management; ESA 225 Land and Environmental Issues in Law; RD 336 State Environmental Law; RD 491 Environmental Ethics; and RD 430 Natural Resources Law. Former director of MSU undergraduate environmental studies program at the University Center in Traverse City, Michigan

Land Use Programs Consultant – Tip of the Mitt Watershed Council, Petoskey/Traverse City, Michigan.

2002 - 2004 Land use programs consultant undertaking master planning, zoning ordinance audit and development, site conservation design/development, site plan review, and land use training and education programs. Duties also include environmental planning; ecological assessment; soil and groundwater investigation; wetland determination, assessment, delineation and restoration; risk assessment, management and communication; brownfield redevelopment; litigation support and expert witness; and all aspects of technical services development, marketing and administration.

CHRISTOPHER P. GROBBEL

Page 2

Northwest Michigan Land Use Agent – MSU Extension, Grand Traverse County, Michigan.

1999 - 2003

Developer, co-author and coordinator of MSUE's award winning Citizen Planner statewide land use training program in Michigan. Design and teaching of college credit and adult learner non-credit courses in land use planning and law, environmental law and policy, community development, wetlands and watershed management, *etc.* Member of Leelanau County Agricultural Alliance, Antrim-Grand Traverse County farmland preservation task force involved in undertaking surveys and geographic information system mapping toward county administered farmland preservation programs.

Director of Education and Land Stewardship – Leelanau Conservancy, Leland, Michigan.

1998 - 1999

Design and delivery of land use, conservation and environmental education programs for school children, landowners, professionals and local and regional units of government. Implementation of the Leelanau Geography Project, including the training of middle school teachers from ten (10) area public and private schools. Communication and outreach to visual, print, audio and electronic media. Design and implementation of web pages for Leelanau Conservancy and regional environmental education consortium. Writing and administration of numerous grants.

Co-owner/Senior Project Manager - Compliance, Inc. Environmental Engineering, Traverse City and Detroit, Michigan.

1996 - 1998

Founder of Southwest Detroit office for Compliance, Inc. Regulatory specialist and senior project manager for the investigation and remediation of sites of environmental contamination, brownfield redevelopment, air permitting and leaking underground storage tank programs. Recipient of Kresge Foundation brownfield redevelopment project grant, and board member for Cluster 5 (Southwest Detroit) of Detroit's Community Reinvestment Strategy initiative.

Regulatory Specialist/Project Manager - Environmental Solutions, Inc., Traverse City, Michigan.

1992 - 1996

Regulatory specialist and project manager for the investigation and remediation of sites of environmental contamination.

Environmental Enforcement Specialist - Michigan Department of Environmental Quality, Environmental Response Division, Lansing, Michigan.

1991 - 1992

Liaison to the Department of the Attorney General in the enforcement and litigation of state environmental regulations.

Environmental Quality Analyst - Michigan Department of Environmental Quality, Environmental Response Division, Gaylord, Michigan.

1989 - 1991

Compliance and enforcement of state hazardous waste, solid waste and leaking underground storage tank (LUST) regulations for eight county region. Responsible for coordination of Part 201 and LUST programs for the eight (8) county Gaylord District.

CHRISTOPHER P. GROBBEL

Page 3

Water Quality Specialist - Michigan Department of Natural Resources, Land and Water Management Division, Lansing, Michigan.

1988 - 1989 Production supervisor and design assistant for the Michigan Statewide Groundwater Data Base geographic information system.

U.S. Peace Corps – Returned Peace Corps Volunteer.

1987 - 1988 Worked in the development of agro-forestry systems, soil conservation and environmental education projects in Guayas Province, Ecuador.

Consultant - Michigan Department of Natural Resources, Groundwater Quality and Land and Water Management Divisions, Lansing, Michigan.

1986 - 1987 Staff planner and development specialist for the prototype computerized Michigan Statewide Groundwater Data Base.

SELECT PROFESSIONAL PUBLICATIONS & PRESENTATIONS

Local Governmental Role in Oil and Gas Regulation, WMEAC Conference, Fracking in Michigan, December 3, 2014, Kellogg Center, E. Lansing, Michigan.

Environmental Issues in Natural Gas Production, Harrison, W.B. III, Peters, J., Poll, J., Grobbel, C., VanDyke, A., and Sadler, S., Foxmoor Continuing Education, a Division of Half Moon Education, Inc., publication, 2014.

What is a Taking? Exploring the Boundary between Public Interest and Private Property, Kohler, Ellen, Esq. and Grobbel, Christopher, Ph.D., Tip of the Mitt Watershed Council publication, 2004.

Summary of Property Takings Case Law, Michigan State University Land Use Series, East Lansing, Michigan, December 16, 2002, <http://www.msue.msu.edu/aoe/lab/nduse/landindex.html>.

Citizen Planner Program Curriculum, training course series for non-professionals involved in local land use decision-making, Michigan State University Extension, 175 pp., copyright 2000. Principal author and instructor of Legal Foundations of Planning and Zoning; Private Property Rights and the Takings Issue; Zoning for Water Quality; Farmland Preservation Tools and Techniques; Principles of the New Urbanism; Brownfield Redevelopment; Wetland Science and Regulation; and Riparian Rights.

An Examination Of Indicators Of Social Equity In Michigan Environmental Policy: The Case Of The Michigan Environmental Response Program, Ph.D. dissertation for the College of Agriculture and Natural Resources, Resource Development Department, Michigan State University, 200 pp., 1998.

Environmental Justice Bibliography, 1975-1994, D. Doberneck, C. Grobbel, T. Link, and G. Guluma, Office of Diversity and Pluralism, College of Agriculture and Natural Resources, and the Resource Development Department, Michigan State University, 79 pp., 1995.

Environmental Equity and U.S. Policy, Community News & Views, Vol. 6, No. 4, Urban Affairs Programs, Michigan State University, Winter 1994.

CHRISTOPHER P. GROBBEL

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Wellkey: User Documentation, Christopher P. Grobbel and Bruce Morrison, 69 pp., 1989.

Water Well Record Location Verification and Automation: A Pilot Project for Isabella County, Michigan, M.N. Beaulac and Christopher P. Grobbel, 50 pp., 1987.

State v.s. Federal Rights in the Regulation of Natural Resources: Legal Issues Surrounding Great Lakes Water Diversion, A Master's Thesis for the College of Agricultural and Natural Resources, Michigan State University, Christopher P. Grobbel, 120 pp., 1986.

Water Management in Michigan: Legal Issues in Michigan Water Planning, Dan Bronstein, Leighton Leighty, John Vincent and Christopher Grobbel, 214 pp., 1985.

Presenter of "Environmental Issues with Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale" numerous conferences and presentations through-out Michigan, 2010 – 2014.

Panelist: "Risks of Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale," Michigan State University Extension, Traverse City, Michigan, June 24, 2010.

Instructor of "Planning and Zoning Essentials" Michigan Association of Planning, February 25, 2010, Perry Davis Hotel, Petoskey, Michigan.

Presenter of "Role of Local Government in Protecting Wetlands" at the Planning Michigan Conference, Michigan Association of Planning's 2009 Planning Conference, October 2, 2009, Mt. Pleasant, Michigan.

Presenter of "Role of Local Government in Michigan Wetland Regulation" at the Michigan Wetlands: Celebrating the 25th Anniversary of the Wetland Protection Act Conference, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Northwestern Michigan College, Water Studies Institute, and U.S. Environmental Protection Agency, May 20-22, Traverse City Michigan.

Presenter of "Groundwater Disputes: Case Studies and Solutions" at the 10th Annual Michigan Environmental Health Professionals Conference, October 12-15, 2003, Shanty Creek, Bellaire, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, September 30, 2003, Inland Lakes Education Center, Indian River, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, August 22, 2003, Grand Traverse Bay Watershed Conference, Holiday Inn, Traverse City, Michigan.

Presenter of "Farmland Preservation Tools and Techniques and Landowner Options" at the 52nd Annual Benzie-Manistee Horticultural Show, March 18-20, 2003, Crystal Mountain, Thompsonville, Michigan.

Presenter "Development Rights" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, April 22, 2003.

CHRISTOPHER P. GROBBEL

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Presenter "**Riparian Rights**" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, March 25, 2003.

Panelist "**The Legalities of Land Use**" for MSU Extension/HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, December 10, 2002.

Presenter "**Planning and Zoning - How to Stay Out of Court**" at the Annual Michigan Society of Planning Conference, Community, Culture, Change: Planning Michigan, Kalamazoo, October 2 through 5, 2002.

Presenter of "**Michigan's Environmental Regulatory Legacy**" at the 2001 Kickoff: Michigan Groundwater Stewardship Program, Michigan Department of Agriculture, Michiganiana, Boyne City, Michigan, October 25, 2000.

Presenter of "**Hydrogeology, Contaminant Monitoring, Fate and Transport, and Contaminant Remediation**" at the Chemical Applications: Pesticide/Fertilizer Application Workshop, Michigan State University, East Lansing, Michigan, March 30 – 31, 2000.

Presenter at the 2000 Envirothon, "**Renewable Energy: Taking Another Look**", Northwest Michigan Horticulture Research Station, Michigan State University Extension, February 18, 2000.

Co-presenter "**Land Use Conflict: When City and Country Clash**", A project of the National Public Policy Education Committee in Cooperation with the Farm Foundation, Northwest Michigan Orchard Show, Grand Traverse Resort, Acme, Michigan, January 25, 2000.

Panelist "**Building Consensus in Land Use and Growth**", Council of Michigan Foundations annual conference, Grand Traverse Resort, Acme, Michigan, October 4, 2000.

Panelist at "**A Community Forum of Brownfield Redevelopment along Boardman Lake**", Traverse City, Michigan, October 13 and 27, 1998.

Panelist on "**Impact of the Michigan Environmental Response Act**" at the Michigan Department of Treasury's 8th Annual Directions in Public Finance Conference at the Grand Traverse Resort, Acme Michigan on June 2, 1995.

Presented an **Environmental Regulatory Update: Issues Related to Commercial Lender Liability** for Old Kent Bank, March 11, 1994 and June 7, 1995.

Presented Guidelines for the **Purchasing, Handling and Disposal of Hazardous Materials** with Benson, McCurdy & Wotila, P.C. for Northern Michigan Purchasing Agents in Kalkaska, Michigan on March 9, 1994.

Presenter - **An Overview of Michigan Environmental Response Act and Other Environmental Regulations** for Grand Traverse Area Certified Public Accounts and Attorneys at the Grand Traverse Resort, Traverse City, December 10, 1991.

Guest Lecturer in **Wetland Law** – Detroit College of Law, Michigan State University, East Lansing, Michigan, Spring 2002.

CHRISTOPHER P. GROBBEL

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Guest Lecturer in **Environmental Justice Studies** – University of Michigan, School of Natural Resources, Ann Arbor, Michigan, Spring 1998.

Guest Lecturer in **Environmental Justice and the Law** – Cooley Law School, Lansing, Michigan, Fall 1997.

Guest Lecturer in **Environmental Studies** – Western Michigan University, Kalamazoo, Michigan, 1994 through 1999.

FURTHER EDUCATION

Training – **Understanding the Depth of Deep Well Injection**, North Central Michigan College, Petoskey, Michigan, May 20, 2010.

Training – **Design for Rain Gardens: Stormwater and Runoff Control**, North Carolina State University and Tetra Tech, April 16, 2009.

Training – **Wetland Plant Identification**, Wetland Training Institute, Dr. Mollenberg, Lansing, Michigan, May 21-24, 2002.

Training - **Planning Hydrology for Constructed Wetlands**, Wetland Training Institute, Dr. Gary Pierce, Pierce Cedar Creek Institute, Hastings, Michigan, July 9 - 13, 2001.

Training - **U.S. Army Corps of Engineers Wetland Delineation and Management Training**, Richard Chinn Environmental Training, Inc., Chicago, Illinois, October 9 - 13, 2000.

Training – **Special Wetland Area Management Project**, Geographic Information System Wetland Data Northwest Michigan Council of Governments, Traverse City, Michigan, August 31, 2000.

Training – **Web Site Design Course**, Michigan State University Extension, University Center, Traverse City, Michigan May 4, 2000.

Training - **American Institute of Certified Planners (AICP) Comprehensive Exam Preparatory Course**, February through April 17, 2000.

Training - **Computer Technologies and Groundwater Resource Data Management**, U.S. EPA, Atlanta, Georgia, August 1986.

Seminar - **Hazardous Waste Management under the Resource Conservation and Recovery Act**, Waste Management Division of the Michigan Department of Natural Resources, February 1989.

Training - **Soil and Groundwater Sampling and Analysis** - Michigan Department of Natural Resources, April 1989.

Training - **Innovative Remedial Action Technologies**, Environmental Response Division, Michigan Department of Natural Resources, 1989.

CHRISTOPHER P. GROBBEL

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Seminar - **Underground Storage Tank Management**, Department of Engineering Professional Development, University of Wisconsin, 1989.

Training - **Amendments to the Michigan Environmental Response Act, 1988 P.A. 307**, Michigan Department of Natural Resources, 1990.

Seminar - **Leak Detection and Corrective Action for Underground Storage Tanks**, Department of Engineering Professional Development, University of Wisconsin, 1990.

Seminar - **Groundwater Flow and Well Hydraulics**, Department of Engineering Professional Development, University of Wisconsin, 1991.

Cleaning The Air in West Michigan #4: Recognizing and Dealing with Non-compliance, Varnum, Riddering, Schmidt and Howlett, and Grand Valley State University - Water Resources Institute, Grand Rapids, Michigan, September 1994.

ASTM - Environmental Site Assessment Up-date, Chicago, Illinois, August 1994.

Seminar - **IBM PC Applications in Groundwater Pollution and Hydrology**, Groundwater Modeling and Computer Technologies for Groundwater Quality Management - National Ground Water Association, Boston, Massachusetts, August 1994.

Workshop - **Waste Minimization and Energy Efficiency Workshop** - American Automobile Manufacturers Association, Michigan Departments of Commerce and Natural Resources and the U.S. EPA, Detroit, Michigan, December 1994.

Seminar - **Clean Air Act Amendments, Sec. 112(R) - Process Safety Management and Risk Management Compliance**, Michigan Association of Environmental Professionals Howell, Michigan, December 1994.

Workshop - **Waste Minimization and Energy Efficiency Workshop** - Michigan Departments of Commerce and Natural Resources, Traverse City, Michigan, May 1995.

Training - **Risk-Based Corrective Action (RBCA) Applied at Petroleum Sites (ASTM E38-94)**, ASTM by Foster Wheeler Environmental Corporation, Bellevue, Washington, July 14-15, 1995.

Conference - **Restructuring Rural Society and Rural Sociology**, Environmental Justice, 58th Annual Meeting, Rural Sociological Society, Ritz-Carlton Hotel, Pentagon City, Virginia, August 17-20, 1995.

Conference - **Michigan Chapter of the American Planning Association and the Michigan Society of Planning Officials**, 4th Annual Joint Conference, "Planning Michigan For the People, By the People", Amway Grand Plaza, Grand Rapids, Michigan, September 22-25, 1999.

Seminar - **Innovative Septic Technologies**, Michigan State University Engineering Department, Michigan State University Extension and Northwest Michigan Council of Governments, Traverse City Library, Traverse City, Michigan, August 25, 2000.

CHRISTOPHER P. GROBBEL

Page 8

Academic Achievement:

Phi Beta Kappa
Golden Key National Honor Society
Alpha Zeta Agriculture and Natural Resources Honor Society
Numerous scholarships, assistantships and fellowships

Professional Certifications:

OSHA 40-Hour Site Safety Training
OSHA 8-Hour Site Safety Training
OSHA Hazardous Waste Site Supervisory Safety Training
Qualified Underground Storage Tank Professional #190, State of Michigan, Department of Environmental Quality.
Michigan Association of Planning, certified instructor.

Professional Associations:

Michigan Association of Environmental Professionals, member.
National Association of Environmental Professionals, member.
National Ground Water Association, member.
Society of Wetland Scientists, member.
Michigan Association Planning, certified instructor and former education committee member.
American Planning Association, member.

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of

Nixon Area Alliance on the Permit
Issued to Toll Brothers, Inc.

File No.: 14-81-0040-P

Part: 303, Wetlands Protection

Agency: Department of Environmental
Quality

Case Type: Water Resources Division

Presiding: HON. DANIEL J. PULTER, ALJ

Ross A. Hammersley (P70105)
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Dr. William C. Larsen
MICHIGAN DEPT. OF ENVIRONMENTAL
QUALITY – Water Resources Division
525 West Allegan
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Lansing, MI 48909-7958
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PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

June 1, 2016

Petitioner, the Nixon Area Alliance, through its attorneys, OLSON, BZDOK & HOWARD, PC, and pursuant to MCR 3.310 and Administrative Hearing Rule 102 (MICH. ADMIN. CODE R. 792.10102(3)), submits the following as its Motion for Preliminary Injunction and Brief in Support, Request for a Temporary Restraining Order, and Order to Show Cause Why a Preliminary Injunction Should Not Issue:

1. Petitioners filed a petition for contested case in this matter on January 15, 2016.
2. Pursuant to the Notice of New File Opening issued by this tribunal on or about February 16, 2016, Petitioners elected to pursue negotiations with Intervening Permittee, Toll Brothers, Inc., and the Respondent Michigan Department of Environmental Quality – Water Resources Division; a joint meeting of all parties was held on April 19, 2016.
3. Following the first meeting of the parties, Petitioner engaged with a highly-qualified environmental expert for the purpose of analyzing the conditions on, and in the immediate vicinity of, the Intervenor’s “Nixon Farms South” (NFS) and “Nixon Farms North” (NFN) properties forming the subject matter of this case.
4. Access to both properties for the purpose of conducting an ecological analysis of the site’s wetlands, soils, and related hydrologic conditions on both properties by Petitioner’s highly-qualified environmental expert was previously denied by Intervenor (in the course of the April 19th meeting), and subsequent, persistent and repeated contacts with counsel for the prior owner/Intervenor’s predecessor-in-interest as to the subject properties were similarly rebuffed in their entirety.
5. Petitioner’s environmental expert is ready and able to perform the sought-after site evaluation, and has averred that conducting an evaluation of the wetlands in the early summer period will provide the most precise identification possible of vegetative species, soil,

and hydrologic characteristics on the NFS and NFN properties. See Exhibit 1 to attached Brief in Support.

6. As of May 27th, 2016, the Intervenor and/or its agents placed heavy equipment for the purpose of clearing, mowing, grading, excavating, or otherwise preparing the NFS site. See Exhibit 2 to attached Brief in Support.

7. Upon information and belief, on Tuesday, May 31st, the Intervenor began site preparation activities of the kind described in the immediately preceding paragraph on the NFS site.

8. Initiation of the above-referenced site preparation activities causes the existing environmental conditions of the site to be fundamentally altered, and potentially damaged, thereby precluding a full and complete analysis and evaluation thereof and exemplifying the irreparable harm standard for injunctive relief.

9. The balance of harms and public interest support granting a preliminary injunction in this matter because a preliminary injunction would prevent the irreversible alteration and damage of site conditions on the NFS and NFN properties and would preclude the Intervenor from pressing forward with its development plans in spite of the contested case proceedings lawfully initiated by neighbors on nearly all sides of said properties. The harm suffered by the Petitioners and by the public interest in the absence of an injunction exceeds any arguable potential harm the Intervenor would experience by granting Petitioner's requested relief.

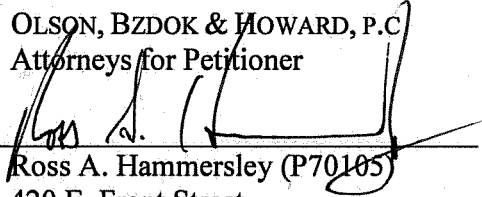
Relief Requested

For the reasons set forth above, in the attached brief in support of this motion, in the contemporaneously-filed Motion for Immediate Site Inspection, and in the Petitioner's Contested Case Petition, all of which are incorporated in this motion by reference, Petitioner respectfully requests this Tribunal grant a Temporary Restraining Order and issue an Order to Show Cause Why a Preliminary Injunction Should Not Issue under MCR 3.310 (as applied in this case through Administrative Rule 102 (MICH. ADMIN. CODE R. 792.10102(3))).

Date: June 1, 2016

By: _____

OLSON, BZDOK & HOWARD, P.C.
Attorneys for Petitioner


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420 E. Front Street
Traverse City, MI 49686
(231) 946-0044
ross@envlaw.com

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of

Nixon Area Alliance on the permit
Issued to Toll Brothers, Inc.

File No.: 14-81-0040-P

Part: 303, Wetlands Protection

Agency: Department of Environmental
Quality

Case Type: Water Resources Division

Presiding: HON. DANIEL J. PULTER, ALJ

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BRIEF IN SUPPORT
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION

June 1, 2016

This motion for preliminary injunction is brought to halt the mowing, grading, excavation, and/or other surface and subsurface disturbance of the properties known as "Nixon Farms South" (NFS) and "Nixon Farms North" (NFN) so as to preserve the environmental site conditions thereupon until further order of this Tribunal and to facilitate an ecological analysis of the site's wetlands, soils, and related hydrologic conditions on both properties by Petitioner's highly-qualified environmental expert. For the reasons set forth in this brief, in the accompanying motion for preliminary injunction, request for temporary restraining order and order to show cause why a preliminary injunction should not issue, in the motion for immediate site inspection by environmental expert filed contemporaneously with this motion, and in Petitioner's Contested Case Petition and its attached exhibits, Petitioner Nixon Area Alliance respectfully requests that this Tribunal grant a Temporary Restraining Order and issue an Order for Intervenor and Respondent to Show Cause as to why a preliminary injunction should not issue in this matter.

STATEMENT OF FACTS

This matter arises out of the Intervenor's plans to develop 272 housing units on the subject properties. Both the NFS and NFN properties are part of the Traver Creek headwaters (eventually feeding tributaries flowing into the Huron River) and have significant wetlands and ponds and other standing water on site. Petitioner is prepared to show that a high water table and persistent storm-water management issues have caused problems for several surrounding housing developments, and the proposed development of the Intervenor could potentially exacerbate those issues and cause significant environmental and financial harm both to the surrounding property owners as well as to potential purchasers of any such units in Intervenor's development, should it be constructed. Furthermore, the scope of wetlands impacts caused by the proposed

development was artificially minimized based on the improper segmentation of this project as proposed in the developer's application to the Respondent DEQ. Specifically, roadway improvements at least partially funded by the Intervenor and necessitated by the introduction of the projects' nearly 300 residential units on adjacent Nixon and Dhu Varren Roads will have significant deleterious and harmful effects on wetlands presently existing on the site, but those improvements were inexplicably left out of the Intervenor's Part 303 permit application materials, and thereby, from the Respondent DEQ's analysis of the various factors informing a Part 303 permit application decision, including, but not limited to, the presence or absence of feasible and prudent alternatives to the project as proposed.

Although Petitioner sought to negotiate in good faith with the Intervenor and Respondent, it appears that, because the Respondent DEQ granted the permit, the Intervenor has recently elected to proceed with preparations for the construction of the proposed NFS and NFN sites. As this decision precludes meaningful environmental site analysis of the full scope of the project as proposed (including the unlawfully segmented portions), Petitioner is forced to bring the instant motion to halt said construction/site preparation activities until further order of this Tribunal, at a minimum, until Petitioner's environmental expert can be afforded access to the site to perform an evaluation of the wetlands at issue.

BASIS FOR PRELIMINARY INJUNCTION

Courts consider four factors when determining whether to grant motion for preliminary injunctive relief:

- (1) the likelihood that the party seeking the injunction will prevail on the merits;
- (2) the danger that the party seeking the injunction will suffer irreparable injury if the injunction is not issued;
- (3) the risk that the party seeking the injunction would be harmed more by

the absence of an injunction than the opposing party would be by the granting of the relief; and (4) the harm to the public interest if the injunction is issued.

Campau v McMath, 185 Mich App 724; 463 NW2d 186, 189 (1990). An injunction is appropriate in this case under each of these factors.

1. Plaintiff is likely to Succeed on the Merits

There is no question that Part 303 specifically requires the DEQ to consider the numerous potential impacts caused by the potential loss of a wetland as provided in MCL §324.30302(1)(b) and as contemplated in the proposed development of Intervenor in this case. That analysis includes, *inter alia*, an evaluation of one vitally important question for these particular projects in this location, which is whether the loss of wetlands would deprive the people of “(i) [f]lood and storm control by the hydrologic absorption and storage capacity of the wetland.”

Moreover, Respondent’s Part 303 analysis was hampered in this case by the improper segmentation of necessary and integral portions of the development out of the permit application materials; namely, the improvements to adjacent Dhu Varren and Nixon Roads which are to be performed by the City of Ann Arbor, and which are both required by Intervenor’s development, and actually partially financed by Intervenor directly.

Although Part 303 requires the DEQ to address whether “[t]he proposed activity is primarily dependent upon being located in the wetland,” and whether a “feasible and prudent alternative does not exist,”¹ the removal of the roadway improvements tied to this project precluded a full analysis of feasible and prudent alternatives to the impacts to wetlands on the two properties that will result from said improvements.

¹ MCL §324.30311(4); MICH. ADMIN. CODE R. 281.922a(1)(a).

Based on the plain language of the statute, Petitioners have a strong likelihood of success on the merits, and a preliminary injunction precluding Intervenor from proceeding with the site preparation activities it has initiated is appropriate under these circumstances.

2. Irreparable Harm

Initiation of the above-referenced site preparation activities causes the existing environmental conditions of the site to be fundamentally altered, and potentially damaged, thereby precluding a full and complete analysis and evaluation thereof and exemplifying the irreparable harm standard for injunctive relief. An objective and reasonable review and analysis of the contents of and conclusions reached in the 2013 wetlands delineation performed on behalf of Intervenor Toll Brothers is of great importance in this matter, and without a preliminary injunction, Petitioner will be permanently precluded from procuring such an independent analysis. Furthermore, the resulting impacts on the wetlands on both the NFS and NFN properties arising out of the widening of roads adjacent to and serving the project sites (including an intersection which bisects an existing pond with wetlands on both properties) and evaluation of feasible and prudent alternatives to the entirety of the project was not analyzed in the Intervenor's permit application materials, as the effect of said road-work were improperly segmented out of those materials. Because those activities are fundamentally tied to, and partially financed by the Intervenor for this project, a Part 303 analysis of their effects on wetlands on the properties is required. Allowing the Intervenor to proceed with its activities in the absence of a preliminary injunction will effectively preclude a full analysis of the overall project and avoidable losses to state-regulated wetlands will occur, contrary to the intent and requirements of Part 303.

3. Balance of Harms and the Public Interest

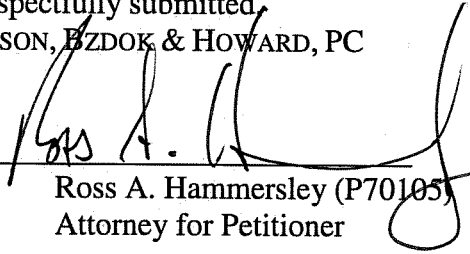
The balance of harms and the public interest support granting a preliminary injunction in this matter because a preliminary injunction would prevent the irreversible alteration and damage of site conditions on the NFS and NFN properties and would preclude the Intervenor from pressing forward with its development plans in spite of the contested case proceedings lawfully initiated by neighbors on nearly all sides of said properties. The harm suffered by the Petitioners and by the public interest in the absence of an injunction exceeds any arguable potential harm the Intervenor would experience by granting Petitioner's requested relief.

For these reasons, Petitioner respectfully requests this Tribunal grant a Temporary Restraining Order and issue an Order to Show Cause Why a Preliminary Injunction Should Not Issue under MCR 3.310 (as applied in this case through Administrative Rule 102 (Mich. Admin. Code R. 792.10102(3))).

Respectfully submitted,
OLSON, BZDOK & HOWARD, PC

Date: June 1, 2016.

By: _____


Ross A. Hammersley (P70105)
Attorney for Petitioner

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of
Nixon Area Alliance
_____ /

File No. 14-81-0040-P
Hon. Daniel J. Pulter, ALJ

AFFIDAVIT OF CHRISTOPHER P. GROBBEL, Ph.D.

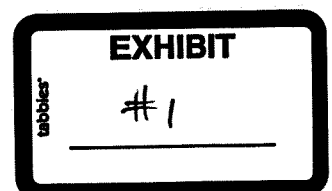
I, Christopher P. Grobbel of Grobbel Environmental & Planning Associates, LLC, being sworn, state the following:

1. I hold a Ph.D. from Michigan State University, Resource Development Department in the field of Environmental Policy & Law. I also obtained Masters and Bachelor of Science degrees from Michigan State University emphasizing the study of environmental science, hydrology and forestry. My curriculum vitae is attached to this affidavit as **Exhibit A**.

2. I have worked for the Michigan Department of Natural Resources, Gaylord and Lansing offices, for the Land & Water Management and Environmental Response Divisions, including liaison with the Department of Attorney General and specializing in environmental quality assessment.

3. I have worked as an environmental professional for 25 years, which has included ecological assessment, evaluation of cumulative environmental impact, wetland science, hydrology/hydrogeology, and community planning and zoning. I have designed and taught courses in environmental law and policy at Michigan State University since 1992.

4. I have recently served and/or currently serve as the professional planner for Michigan townships including but not limited to Norman Township, Manistee County; Bay and Norwood Townships, Charlevoix County; Elmwood Township, Leelanau County; Torch Lake Township, Antrim County; Edwards Township, Ogemaw County; Acme and Mayfield



Townships, Grand Traverse County; Redmond and Friendship Townships, Emmet County; and Ogemaw County.

5. I have had ongoing training in hydrologic study and wetland delineation, including many courses at the University of Wisconsin and Northwest Michigan Council of Governments, and am a member of the Society of Wetland Scientists, Michigan and National Association of Environmental Professionals, Michigan Society of Planning, and the National Ground Water Association.

6. I have previously been qualified as an expert in wetland science, wetland characterization and delineation, environmental quality assessment, cumulative environmental risk assessment and management, MDNR/MDEQ policies and procedures, hydrology/hydrogeology, and geomorphology by numerous Michigan courts.

7. I have visited the properties at issue in the above-captioned case, and have begun a review of the site plans and documentation related to the permit granted by the MDEQ (File #14-81-0040-P) for the proposed development of Intervenor, Toll Bros., Inc., as well as the transportation infrastructure studies and plans for the intersection of Nixon and Dhu Varren Roads in north-east Ann Arbor.

8. To date, the Intervenor, Toll Bros., Inc., has not granted me access to their property to conduct a full ecological site assessment. However, I have visited the site vicinity through adjoining public property and permitted entry on adjoining private property.

9. Through independent analysis and direct observation, based on (i) my recent personal observations of the subject properties from the road right-of-ways along Nixon and Dhu Varren Roads and the adjacent surrounding properties to which I was granted access, and (ii) my initial review of documents relating to the Intervenor's proposed development (including, but not

limited to, original and amended site plans, wetlands permit application materials, city roadway infrastructure planning documents, and the Nov. 15, 2013 wetlands boundary map apparently created for/on behalf of the Intervenor by King & MacGregor Environmental, Inc. (#13219)), I have preliminarily concluded that further, detailed inquiry into the following issues is necessary in order to properly assess the conditions of the subject properties from an environmental/ecological perspective:

- a. Extent of Wetlands – It appears that the full extent of wetlands boundaries on the property is insufficiently quantified in the Intervenor’s materials and has not been adequately delineated thereupon;
- b. Storm Water Management – The surface water and groundwater in the vicinity of the subject properties, combined with the storm water management design elements and wetlands mitigation areas as set forth on the Intervenor’s site plans/materials appear to indicate severe deficiencies in the ability of the site to manage storm water in the manner suggested by said plans/materials; and
- c. Endangered/Threatened Species – Several endangered/threatened plant and insect species are known to be present on properties in the immediate vicinity of the proposed development sites, and appear likely to be present on-site. Furthermore, the site appears to be attractive habitat for certain listed mammals and insects that are also known to be in the surrounding area.

10. In order to fully assess these and other potentially important ecological inquiries, it is important for me to gain temporary access to the Nixon Farms North and Nixon Farms South properties proposed for development by the Intervenor. Temporary access to said

properties would allow for vegetative identification, wetlands mapping and soils analysis, as well as wildlife and insect observation and identification when possible.

11. From the perspective of assessing the wetlands and storm water management issues in particular, as well as for identification of listed plant species of concern, a site visit in the near future (before the end of June) would be ideal.

12. State and federal regulations generally define wetlands as areas that are inundated or saturated by surface or groundwater at frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

13. Required methods to determine the presence of and/or to delineate the extent of wetlands rely upon the inventory of upland and wetland plants, assessment of soil conditions, and an investigation of near surface hydrology.

14. Specifically, ideal conditions exist in early summer to inventory and assess on-site wetland plant species, i.e. early in the "phenological" period of on-site wetland vegetation.

15. "Phenology" indicates the time frame for the seasonal life cycle of plants (especially plant flowering), and other biological phenomena.

16. It appears the previous wetland assessment/delineation was completed in the fall of 2013 (i.e., by King and MacGregor Environmental, Inc., as agent for Toll Brothers, Inc. on November 15, 2013).

17. Wetland delineation methods to assess wetland hydrology require a determination that an area in most years is inundated or saturated for at least 5% (in consecutive days) of the growing season.

18. "Growing season" is defined as that portion of the year when soil temperature at 20 inches below the ground surface is above biological zero, i.e. 41° F, 5° C.

19. For these reasons, it is ideal to assess wetland conditions at a given location in Washtenaw County in the early summer.

20. Due to the strong likelihood of irreversible damage to presently existing natural site conditions that would preclude the completion of an appropriate ecological site assessment on the property(ies), any disturbance of the soils, including, but not necessarily limited to, site preparation, grading, staging of vehicles, and excavation should be precluded entirely, or at least delayed until such time as the site visit and assessment has been completed.

21. The Intervenor's development will require dredging and/or filling of wetlands, road building, and construction of housing development units, all of which would result in significant habitat destruction.

22. For these reasons, I believe the Intervenor's development, as presently constituted, risks the pollution, impairment, or destruction of natural resources.


23. This affidavit is made on my own personal knowledge.

24. If sworn as a witness, I can competently testify to the facts in this Affidavit.

The above is true to the best of my knowledge, information and belief.

Further Affiant sayeth not.

Dated: May 20, 2016.

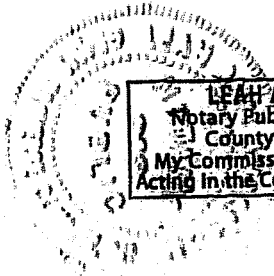


Christopher P. Grobbel, Ph.D.

Grand Traverse COUNTY
STATE OF MICHIGAN

)
) ss.

Subscribed and sworn to before me on the ^{4th} ~~28th~~ day of May, 2016, by Christopher P. Grobbel, Ph.D



LEAH ANN ANDERSON
Notary Public, State of Michigan
County of Grand Traverse
My Commission Expires Apr. 7, 2021
Acting in the County of Grand Traverse

Leah Ann Anderson
Leah Ann Anderson, Notary Public
Grand Traverse County, Michigan
My commission expires: April 7, 2021
Acting in Grand Traverse County

CHRISTOPHER P. GROBBEL

EDUCATION

Ph. D. Environmental Policy and Law, Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1998.

M.S. Environmental Policy and Law / Hydrogeology - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1986.

B.S. Environmental Science / Forestry with High Honor - Michigan State University, Resource Development Department, College of Agriculture and Natural Resources, 1983.

PROFESSIONAL EXPERIENCE

Principal/Senior Associate – Grobbel Environmental & Planning Associates, Traverse City, Michigan.

1998 to Present Founder and president of the environmental consulting and land use planning firm, Grobbel Environmental & Planning Associates. Project experience includes watershed management and protection planning; community master planning, police power and zoning ordinance development; land use and environmental planning; ecological assessment; wetland determination, restoration and delineation; soil/groundwater investigation and remediation; risk assessment, management and communication; brownfield redevelopment; innovative stormwater treatment system design and construction; litigation support and expert witness; and all aspects of business development, media relations, financial management, marketing and administration.

Assistant/Adjunct Professor – Department of Community Sustainability/CARRS/Resource Development Department, College of Agriculture & Natural Resources, Michigan State University, Traverse City and East Lansing, Michigan.

1992 to Present Design and teaching of college undergraduate courses entitled: CSUS 425 Environmental Impact Assessment; CSUS 465 Environmental and Natural Resources Law; CSUS 200 Introduction to Sustainability; CSUS 320 Environmental Planning and Management; ESA 225 Land and Environmental Issues in Law; RD 336 State Environmental Law; RD 491 Environmental Ethics; and RD 430 Natural Resources Law. Former director of MSU undergraduate environmental studies program at the University Center in Traverse City, Michigan

Land Use Programs Consultant – Tip of the Mitt Watershed Council, Petoskey/Traverse City, Michigan.

2002 - 2004 Land use programs consultant undertaking master planning, zoning ordinance audit and development, site conservation design/development, site plan review, and land use training and education programs. Duties also include environmental planning; ecological assessment; soil and groundwater investigation; wetland determination, assessment, delineation and restoration; risk assessment, management and communication; brownfield redevelopment; litigation support and expert witness; and all aspects of technical services development, marketing and administration.

CHRISTOPHER P. GROBBEL

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- Northwest Michigan Land Use Agent – MSU Extension, Grand Traverse County, Michigan.**
1999 - 2003 Developer, co-author and coordinator of MSUE's award winning Citizen Planner statewide land use training program in Michigan. Design and teaching of college credit and adult learner non-credit courses in land use planning and law, environmental law and policy, community development, wetlands and watershed management, *etc.* Member of Leelanau County Agricultural Alliance, Antrim-Grand Traverse County farmland preservation task force involved in undertaking surveys and geographic information system mapping toward county administered farmland preservation programs.
- Director of Education and Land Stewardship – Leelanau Conservancy, Leland, Michigan.**
1998 - 1999 Design and delivery of land use, conservation and environmental education programs for school children, landowners, professionals and local and regional units of government. Implementation of the Leelanau Geography Project, including the training of middle school teachers from ten (10) area public and private schools. Communication and outreach to visual, print, audio and electronic media. Design and implementation of web pages for Leelanau Conservancy and regional environmental education consortium. Writing and administration of numerous grants.
- Co-owner/Senior Project Manager - Compliance, Inc. Environmental Engineering, Traverse City and Detroit, Michigan.**
1996 - 1998 Founder of Southwest Detroit office for Compliance, Inc. Regulatory specialist and senior project manager for the investigation and remediation of sites of environmental contamination, brownfield redevelopment, air permitting and leaking underground storage tank programs. Recipient of Kresge Foundation brownfield redevelopment project grant, and board member for Cluster 5 (Southwest Detroit) of Detroit's Community Reinvestment Strategy initiative.
- Regulatory Specialist/Project Manager - Environmental Solutions, Inc., Traverse City, Michigan.**
1992 - 1996 Regulatory specialist and project manager for the investigation and remediation of sites of environmental contamination.
- Environmental Enforcement Specialist - Michigan Department of Environmental Quality, Environmental Response Division, Lansing, Michigan.**
1991 - 1992 Liaison to the Department of the Attorney General in the enforcement and litigation of state environmental regulations.
- Environmental Quality Analyst - Michigan Department of Environmental Quality, Environmental Response Division, Gaylord, Michigan.**
1989 - 1991 Compliance and enforcement of state hazardous waste, solid waste and leaking underground storage tank (LUST) regulations for eight county region. Responsible for coordination of Part 201 and LUST programs for the eight (8) county Gaylord District.

CHRISTOPHER P. GROBBEL

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Water Quality Specialist - Michigan Department of Natural Resources, Land and Water Management Division, Lansing, Michigan.

1988 - 1989 Production supervisor and design assistant for the Michigan Statewide Groundwater Data Base geographic information system.

U.S. Peace Corps – Returned Peace Corps Volunteer.

1987 - 1988 Worked in the development of agro-forestry systems, soil conservation and environmental education projects in Guayas Province, Ecuador.

Consultant - Michigan Department of Natural Resources, Groundwater Quality and Land and Water Management Divisions, Lansing, Michigan.

1986 - 1987 Staff planner and development specialist for the prototype computerized Michigan Statewide Groundwater Data Base.

SELECT PROFESSIONAL PUBLICATIONS & PRESENTATIONS

Local Governmental Role in Oil and Gas Regulation, WMEAC Conference, Fracking in Michigan, December 3, 2014, Kellogg Center, E. Lansing, Michigan.

Environmental Issues in Natural Gas Production, Harrison, W.B. III, Peters, J., Poll, J., Grobbel, C., VanDyke, A., and Sadler, S., Foxmoor Continuing Education, a Division of Half Moon Education, Inc., publication, 2014.

What is a Taking? Exploring the Boundary between Public Interest and Private Property, Kohler, Ellen, Esq. and Grobbel, Christopher, Ph.D., Tip of the Mitt Watershed Council publication, 2004.

Summary of Property Takings Case Law, Michigan State University Land Use Series, East Lansing, Michigan, December 16, 2002, <http://www.msue.msu.edu/aoe/lab/nduse/landindex.html>.

Citizen Planner Program Curriculum, training course series for non-professionals involved in local land use decision-making, Michigan State University Extension, 175 pp., copyright 2000. Principal author and instructor of Legal Foundations of Planning and Zoning; Private Property Rights and the Takings Issue; Zoning for Water Quality; Farmland Preservation Tools and Techniques; Principles of the New Urbanism; Brownfield Redevelopment; Wetland Science and Regulation; and Riparian Rights.

An Examination Of Indicators Of Social Equity In Michigan Environmental Policy: The Case Of The Michigan Environmental Response Program, Ph.D. dissertation for the College of Agriculture and Natural Resources, Resource Development Department, Michigan State University, 200 pp., 1998.

Environmental Justice Bibliography, 1975-1994, D. Doberneck, C. Grobbel, T. Link, and G. Guluma, Office of Diversity and Pluralism, College of Agriculture and Natural Resources, and the Resource Development Department, Michigan State University, 79 pp., 1995.

Environmental Equity and U.S. Policy, Community News & Views, Vol. 6, No. 4, Urban Affairs Programs, Michigan State University, Winter 1994.

CHRISTOPHER P. GROBBEL

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Wellkey: User Documentation, Christopher P. Grobbel and Bruce Morrison, 69 pp., 1989.

Water Well Record Location Verification and Automation: A Pilot Project for Isabella County, Michigan, M.N. Beaulac and Christopher P. Grobbel, 50 pp., 1987.

State v.s. Federal Rights in the Regulation of Natural Resources: Legal Issues Surrounding Great Lakes Water Diversion, A Master's Thesis for the College of Agricultural and Natural Resources, Michigan State University, Christopher P. Grobbel, 120 pp., 1986.

Water Management in Michigan: Legal Issues in Michigan Water Planning, Dan Bronstein, Leighton Leighty, John Vincent and Christopher Grobbel, 214 pp., 1985.

Presenter of "Environmental Issues with Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale" numerous conferences and presentations through-out Michigan, 2010 – 2014.

Panelist: "Risks of Hydraulic Fracturing: Unconventional Natural Gas Development of Collingwood Shale," Michigan State University Extension, Traverse City, Michigan, June 24, 2010.

Instructor of "Planning and Zoning Essentials" Michigan Association of Planning, February 25, 2010, Perry Davis Hotel, Petoskey, Michigan.

Presenter of "Role of Local Government in Protecting Wetlands" at the Planning Michigan Conference, Michigan Association of Planning's 2009 Planning Conference, October 2, 2009, Mt. Pleasant, Michigan.

Presenter of "Role of Local Government in Michigan Wetland Regulation" at the Michigan Wetlands: Celebrating the 25th Anniversary of the Wetland Protection Act Conference, Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Northwestern Michigan College, Water Studies Institute, and U.S. Environmental Protection Agency, May 20-22, Traverse City Michigan.

Presenter of "Groundwater Disputes: Case Studies and Solutions" at the 10th Annual Michigan Environmental Health Professionals Conference, October 12-15, 2003, Shanty Creek, Bellaire, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, September 30, 2003, Inland Lakes Education Center, Indian River, Michigan.

Presenter of "Water Quality Protection Tools for Local Government," Kellogg Foundation/People and Land Project, August 22, 2003, Grand Traverse Bay Watershed Conference, Holiday Inn, Traverse City, Michigan.

Presenter of "Farmland Preservation Tools and Techniques and Landowner Options" at the 52nd Annual Benzie-Manistee Horticultural Show, March 18-20, 2003, Crystal Mountain, Thompsonville, Michigan.

Presenter "Development Rights" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, April 22, 2003.

CHRISTOPHER P. GROBBEL

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Presenter "**Riparian Rights**" for HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, March 25, 2003.

Panelist "**The Legalities of Land Use**" for MSU Extension/HARBOR, Inc. at the Little Traverse Township Hall, Emmet County, Michigan, December 10, 2002.

Presenter "**Planning and Zoning - How to Stay Out of Court**" at the Annual Michigan Society of Planning Conference, Community, Culture, Change: Planning Michigan, Kalamazoo, October 2 through 5, 2002.

Presenter of "**Michigan's Environmental Regulatory Legacy**" at the 2001 Kickoff: Michigan Groundwater Stewardship Program, Michigan Department of Agriculture, Michiganiana, Boyne City, Michigan, October 25, 2000.

Presenter of "**Hydrogeology, Contaminant Monitoring, Fate and Transport, and Contaminant Remediation**" at the Chemical Applications: Pesticide/Fertilizer Application Workshop, Michigan State University, East Lansing, Michigan, March 30 - 31, 2000.

Presenter at the 2000 Envirothon, "**Renewable Energy: Taking Another Look**", Northwest Michigan Horticulture Research Station, Michigan State University Extension, February 18, 2000.

Co-presenter "**Land Use Conflict: When City and Country Clash**", A project of the National Public Policy Education Committee in Cooperation with the Farm Foundation, Northwest Michigan Orchard Show, Grand Traverse Resort, Acme, Michigan, January 25, 2000.

Panelist "**Building Consensus in Land Use and Growth**", Council of Michigan Foundations annual conference, Grand Traverse Resort, Acme, Michigan, October 4, 2000.

Panelist at "**A Community Forum of Brownfield Redevelopment along Boardman Lake**", Traverse City, Michigan, October 13 and 27, 1998.

Panelist on "**Impact of the Michigan Environmental Response Act**" at the Michigan Department of Treasury's 8th Annual Directions in Public Finance Conference at the Grand Traverse Resort, Acme Michigan on June 2, 1995.

Presented an **Environmental Regulatory Update: Issues Related to Commercial Lender Liability** for Old Kent Bank, March 11, 1994 and June 7, 1995.

Presented Guidelines for the **Purchasing, Handling and Disposal of Hazardous Materials** with Benson, McCurdy & Wotila, P.C. for Northern Michigan Purchasing Agents in Kalkaska, Michigan on March 9, 1994.

Presenter - **An Overview of Michigan Environmental Response Act and Other Environmental Regulations** for Grand Traverse Area Certified Public Accounts and Attorneys at the Grand Traverse Resort, Traverse City, December 10, 1991.

Guest Lecturer in **Wetland Law** - Detroit College of Law, Michigan State University, East Lansing, Michigan, Spring 2002.

CHRISTOPHER P. GROBBEL

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Guest Lecturer in **Environmental Justice Studies** – University of Michigan, School of Natural Resources, Ann Arbor, Michigan, Spring 1998.

Guest Lecturer in **Environmental Justice and the Law** – Cooley Law School, Lansing, Michigan, Fall 1997.

Guest Lecturer in **Environmental Studies** – Western Michigan University, Kalamazoo, Michigan, 1994 through 1999.

FURTHER EDUCATION

Training – **Understanding the Depth of Deep Well Injection**, North Central Michigan College, Petoskey, Michigan, May 20, 2010.

Training – **Design for Rain Gardens: Stormwater and Runoff Control**, North Carolina State University and Tetra Tech, April 16, 2009.

Training – **Wetland Plant Identification**, Wetland Training Institute, Dr. Mollenberg, Lansing, Michigan, May 21-24, 2002.

Training - **Planning Hydrology for Constructed Wetlands**, Wetland Training Institute, Dr. Gary Pierce, Pierce Cedar Creek Institute, Hastings, Michigan, July 9 - 13, 2001.

Training - **U.S. Army Corps of Engineers Wetland Delineation and Management Training**, Richard Chinn Environmental Training, Inc., Chicago, Illinois, October 9 - 13, 2000.

Training – **Special Wetland Area Management Project**, Geographic Information System Wetland Data Northwest Michigan Council of Governments, Traverse City, Michigan, August 31, 2000.

Training – **Web Site Design Course**, Michigan State University Extension, University Center, Traverse City, Michigan May 4, 2000.

Training - **American Institute of Certified Planners (AICP) Comprehensive Exam Preparatory Course**, February through April 17, 2000.

Training - **Computer Technologies and Groundwater Resource Data Management**, U.S. EPA, Atlanta, Georgia, August 1986.

Seminar - **Hazardous Waste Management under the Resource Conservation and Recovery Act**, Waste Management Division of the Michigan Department of Natural Resources, February 1989.

Training - **Soil and Groundwater Sampling and Analysis** - Michigan Department of Natural Resources, April 1989.

Training - **Innovative Remedial Action Technologies**, Environmental Response Division, Michigan Department of Natural Resources, 1989.

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Seminar - Underground Storage Tank Management, Department of Engineering Professional Development, University of Wisconsin, 1989.

Training - Amendments to the Michigan Environmental Response Act, 1988 P.A. 307, Michigan Department of Natural Resources, 1990.

Seminar - Leak Detection and Corrective Action for Underground Storage Tanks, Department of Engineering Professional Development, University of Wisconsin, 1990.

Seminar - Groundwater Flow and Well Hydraulics, Department of Engineering Professional Development, University of Wisconsin, 1991.

Cleaning The Air in West Michigan #4: Recognizing and Dealing with Non-compliance, Varnum, Riddering, Schmidt and Howlett, and Grand Valley State University - Water Resources Institute, Grand Rapids, Michigan, September 1994.

ASTM - Environmental Site Assessment Up-date, Chicago, Illinois, August 1994.

Seminar - IBM PC Applications in Groundwater Pollution and Hydrology, Groundwater Modeling and Computer Technologies for Groundwater Quality Management - National Ground Water Association, Boston, Massachusetts, August 1994.

Workshop - Waste Minimization and Energy Efficiency Workshop - American Automobile Manufacturers Association, Michigan Departments of Commerce and Natural Resources and the U.S. EPA, Detroit, Michigan, December 1994.

Seminar - Clean Air Act Amendments, Sec. 112(R) - Process Safety Management and Risk Management Compliance, Michigan Association of Environmental Professionals Howell, Michigan, December 1994.

Workshop - Waste Minimization and Energy Efficiency Workshop - Michigan Departments of Commerce and Natural Resources, Traverse City, Michigan, May 1995.

Training - Risk-Based Corrective Action (RBCA) Applied at Petroleum Sites (ASTM E38-94), ASTM by Foster Wheeler Environmental Corporation, Bellevue, Washington, July 14-15, 1995.

Conference - Restructuring Rural Society and Rural Sociology, Environmental Justice, 58th Annual Meeting, Rural Sociological Society, Ritz-Carlton Hotel, Pentagon City, Virginia, August 17-20, 1995.

Conference - Michigan Chapter of the American Planning Association and the Michigan Society of Planning Officials, 4th Annual Joint Conference, "Planning Michigan For the People, By the People", Amway Grand Plaza, Grand Rapids, Michigan, September 22-25, 1999.

Seminar - Innovative Septic Technologies, Michigan State University Engineering Department, Michigan State University Extension and Northwest Michigan Council of Governments, Traverse City Library, Traverse City, Michigan, August 25, 2000.

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Academic Achievement:

Phi Beta Kappa
Golden Key National Honor Society
Alpha Zeta Agriculture and Natural Resources Honor Society
Numerous scholarships, assistantships and fellowships

Professional Certifications:

OSHA 40-Hour Site Safety Training
OSHA 8-Hour Site Safety Training
OSHA Hazardous Waste Site Supervisory Safety Training
Qualified Underground Storage Tank Professional #190, State of Michigan, Department of Environmental Quality.
Michigan Association of Planning, certified instructor.

Professional Associations:

Michigan Association of Environmental Professionals, member.
National Association of Environmental Professionals, member.
National Ground Water Association, member.
Society of Wetland Scientists, member.
Michigan Association Planning, certified instructor and former education committee member.
American Planning Association, member.

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

In the matter of
Nixon Area Alliance

File No. 14-81-0040-P
Hon. Daniel J. Pulter, ALJ

AFFIDAVIT OF JAMES CARL D'AMOUR

I, James Carl D'Amour, being sworn, state the following:

1. I am a citizen of the City of Ann Arbor, residing at 2771 MAPLEWOOD AVENUE.
2. I am familiar with the ongoing dispute and the contested case petition filed with the Michigan Department of Environmental Quality by the Nixon Area Alliance.
3. Around mid-day on May 27, 2016 I visited the eastern-most portion of Dhu Varren Road in Ann Arbor, Michigan that divides the proposed development sites (Nixon Farms "North" and "South") forming the basis of the dispute in this case.
4. During this May 27th site visit, standing in the Dhu Varren Road right-of-way and facing southward I observed a piece of earth-moving equipment resembling a bulldozer parked on the Nixon Farms "South" property.
5. I took three photographs of this "bulldozer" on site, all of which are attached as exhibits to this Affidavit. *See Exhibits 1-3.*
6. This affidavit is made on my own personal knowledge.
7. If called as a witness, I could competently testify to the facts in this Affidavit.

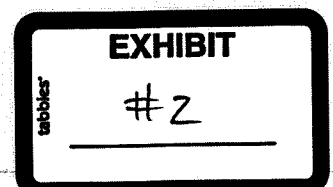
The above is true to the best of my knowledge, information and belief.

Further Affiant sayeth not.

Dated: May 29, 2016.


James Carl D'Amour

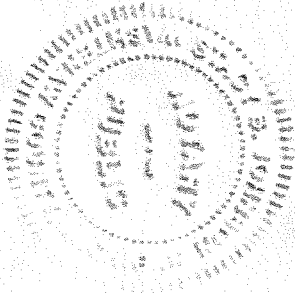
[notary signature block follows on next page]



WASHTENAW COUNTY
STATE OF MICHIGAN

)
) ss.

Subscribed and sworn to before me on the 27th day of May, 2016, by James Carl
D'Amour.



Stacy B. Johnson
STACY B JOHNSON, Notary Public
WASHTENAW County, Michigan
My commission expires: JULY 1, 2020
Acting in WASHTENAW County

STACY B. JOHNSON
Notary Public, Washtenaw County, Michigan
My Commission Expires July 1, 2020
Acting In Washtenaw County

