

Merriam Farm, Inc.
30 Leal Road
New Ipswich, NH 03071

Re: Merriam Road, Surry, NH
Merriam Road, Walpole, NH
Wetlands Bureau File# 2003-02556

ADMINISTRATIVE FINE
NO. AF 06-022

MOTION TO ACCEPT SETTLEMENT AGREEMENT

NOW COME the Department of Environmental Services, Water Division ("Division") and Merriam Farm, Inc. ("Merriam Farm"), parties to the above-captioned matter, and stipulate to the following:

1. Pursuant to RSA 482-A, the Department of Environmental Services ("Department") regulates dredging, filling, and construction in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of the Department ("Commissioner") has adopted NH Code Admin. Rules Env-Wt 100 *et seq.* to implement this program.
2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner is authorized to impose fines of up to \$2,000 per violation for violations of the statute, of rules adopted pursuant to the statute, and of any order or permit issued under the statute. Pursuant to RSA 482-A:11, I, the Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.
3. Merriam Farm is the owner of property located on Merriam Road in the towns of Surry and Walpole, New Hampshire, more specifically identified on Town of Surry Tax Map 4 as Lot 21 ("Surry Property") and on Town of Walpole Tax Map 3 as Lots 49 and 50 ("Walpole Property"). At all times relevant to this matter, the Surry Property and the Walpole Property formed one contiguous tract or parcel of land ("Properties").
4. On August 6, 2003, the Division received Merriam Farm's Notification of Forest Management Activities Having Minimum Wetlands Impact ("Notification") for the Properties.
5. On August 18, 2003, the Division issued a "Complete Forestry Notification" letter to Merriam Farm for the Properties, acknowledging receipt of the Notification and stated that its Notification was sufficient to start work provided that it adhered to certain conditions, including that it follow the methods and practices set forth in "Best Management Practices for Erosion Control on Timber Operations in NH" and avoid wetlands and stream crossings where possible.
6. Based on Division inspections of the Property in response to complaints and due to continued non-compliance following the issuance of Letter of Deficiency WET 04-006 dated February 17, 2004, the Department issued Administrative Order WD 04-019, dated October 22, 2004 ("Order"), to Merriam Farm. The Order required Merriam Farm to submit an erosion and sediment control plan within 30 days, implement the erosion and sediment control plan, submit a wetlands restoration plan within 30 days, retain a certified wetland scientist to prepare plans and supervise implementation, and to implement the restoration plan, once approved.
7. On March 3, 2005, the Division provided Merriam Farm with a written notification of its non-compliance with the Order. While Merriam Farm subsequently made some effort to achieve compliance, a restoration plan acceptable to the Division had not been submitted.

8. Due to continuing non-compliance, the Division issued Notice of Proposed Administrative Fine No. AF 06-022 dated June 7, 2006 ("Notice") to Merriam Farm, seeking administrative fines totaling \$17,000 for violations of RSA 482-A and for violating the Order.
9. The Notice cited Merriam Farm for violating RSA 482-A:3, by replacing 3 culverts in three intermittent streams without a permit from the Department. Pursuant to Env-C 614.02(c)(1), the Division sought an administrative fine of \$500 for each of these 3 violations, for a total of \$1,500.
10. The Notice cited Merriam Farm for violating RSA 482-A:3, by dredging and filling an intermittent stream, with an impact measuring at least 100 linear feet, without a permit from the Department. Pursuant to Env-C 614.04(c), the Division sought an administrative fine of \$1,500 for this violation.
11. The Notice cited Merriam Farm for violating RSA 482-A:3, by dredging and filling 2 additional intermittent streams, with impacts measuring approximately 300 linear feet and 600 linear feet respectively, without a permit from the Department. Pursuant to Env-C 614.05(2)(c)(1), the Division sought an administrative fine of \$2,000 for each of these two violations, for a total of \$4,000.
12. The Notice cited Merriam Farm for violating RSA 482-A:3, by dredging and filling 9,000 square feet of jurisdictional wetlands without a permit from the Department. Pursuant to Env-C 614.03(a)(1), the Division sought an administrative fine of \$2,000 for this violation.
13. The Notice cited Merriam Farm for violating RSA 482-A by failing to comply with best management practices with respect to the use of appropriate erosion controls to protect surface water at stream crossings and acceptable construction and maintenance of skid trails and stream crossings. Pursuant to Env-C 614.06(f), the Division sought an administrative fine of \$2,000 for this violation.
14. The Notice cited Merriam Farm for failing to correct 3 deficiencies contained in the Order. Pursuant to Env-C 614.06(e), the Division sought an administrative fine of \$2,000 for each of the 3 violations, for a total of \$6,000.
15. In order to settle this matter, the Division and Merriam Farm have agreed to the terms of this Settlement Agreement ("this Agreement"), as set forth herein.
16. Merriam Farm agrees to pay the \$17,000 administrative fine proposed in the Notice ("Fine"), in 18 monthly payments. Merriam Farm shall make the first monthly payment to the Division on or before May 1, 2007, as determined by the Department's receipt of the payment. Merriam Farm shall make each subsequent monthly payment such that the Department receives each payment on or before the first calendar day of each month following May 2007.
17. The first 6 monthly payments shall be in the amount of \$1,000, and no interest shall be charged on the outstanding balance of the administrative fine from May 1, 2007 through October 1, 2007. Beginning on October 2, 2007, 6.8% simple annual interest shall be added to the then-outstanding balance of the Fine. Beginning with the 7th monthly payment (due on or before November 1, 2007) and continuing consecutively through and including the 17th monthly payment (due on or before September 1, 2008), Merriam Farm shall pay \$1,000 per month, which shall be credited first to accrued interest with the remainder applied to the outstanding principal. The 18th and final monthly payment (due on or before October 1, 2008), shall be in the amount of the remaining balance of principal and interest.
18. Merriam Farm may accelerate the monthly payments or make a lump sum payment of the Fine without financial penalty. If full payment of the Fine is made on or before October 1, 2007, no interest shall accrue. If the full amount of the Fine is not received by the Department until after October 1, 2007, interest shall accrue on the outstanding balance and shall be due and payable by Merriam Farm.

19. If Merriam Farm neglects or fails to make any payment set forth in this Agreement, the full outstanding balance of the Fine and any accrued interest as of the date of such missed payment shall be immediately due and payable. Upon such neglect or failure, Merriam Farms shall be liable for that amount, in addition to all costs of enforcement and collection, including, but not limited to, fees and costs associated with a civil collection action and enforcement of a judgment from same. However, prior to the terms of this paragraph applying, the Division shall provide written notice to the registered agent of Merriam Farm, as indicated at the Secretary of State's Office, by first-class mail, that a payment has been missed or is overdue. Merriam Farm shall have the opportunity to make that missed or overdue payment within ten days of the postmark on the Division's notice. This grace period shall not alter or change the due dates of any other scheduled payments.

20. Payments under Paragraphs #16 through #19 shall be made by certified or corporate check or money order, made payable to: "Treasurer, State of New Hampshire" and mailed to:

Michael Sclafani, Legal Assistant
Department of Environmental Services - Legal Unit
P.O. Box 95
Concord, NH 03302-0095

21. If any payment made by check or money order is returned due to insufficient funds, pursuant to NH RSA 6:11-a the Department may charge Merriam Farm with a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection. Any such amount(s) shall be due and payable within 30 days.

22. By executing this Agreement, Merriam Farm waives its right to a hearing on or any appeal of the administrative fines identified in the Notice and agrees that this Agreement may be entered into and enforced by a court of competent jurisdiction.

23. The effective date of this Agreement will be the date on which it is signed by David Keurulainen, President, and John Lampi, Treasurer, on behalf of Merriam Farm and the Director of the Water Division, and accepted by the Commissioner. After that date, this Agreement can be amended only by written agreement, signed by all parties and the Commissioner. Any such amendment shall become effective on the date on which it has been accepted by the Commissioner.

24. Merriam Farm acknowledges and agrees that this Agreement does not relieve it or otherwise affect its duties and obligations set forth in or which arise from Restoration Plan Approval, dated February 12, 2007, involving the Properties.

25. Merriam Farm acknowledges and agrees that this Agreement does not relieve it from or otherwise affect its liability for any violation(s) of statutes and/or administrative rules under the jurisdiction of the Department which were not set forth in the Administrative Order and/or the Notice, any permit issued by the Department, and/or any condition set forth in any such permit or the Restoration Plan Approval.

26. Merriam Farm agrees not to challenge the violations cited in the Notice in any future proceeding conducted by the Department to assess its compliance history and/or to determine any subsequent violation(s) of New Hampshire Code of Administrative Rules or statutes, or in any proceeding to enforce this Agreement.

27. Except as described in paragraph 26, above, this Agreement shall not be admissible in any other dispute or action as evidence that Merriam Farm violated any law, rule, regulation, policy, or regulatory

interpretation and it shall not constitute or operate as a waiver of any defense that Merriam Farm may raise in any third party proceeding.

28. No failure by the Department to enforce any provision of this Agreement after any breach or default by or on behalf of Merriam Farm will be deemed as a waiver of the Department's rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this Agreement on any further or subsequent breach or default.

WHEREFORE, the Division and Merriam Farm respectfully request the Commissioner to accept the terms of this Agreement, by granting this Motion.

Respectfully submitted,
MERRIAM FARMS, INC.

H-25-07
Date

COPY
David Keurulainen

By: David Keurulainen
President and Member of the Board of Directors
Duly Authorized

April 25, 07
Date

COPY
John Lampi

By: John Lampi
Treasurer and Member of the Board of Directors
Duly-Authorized

May 3, 2007
Date

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION

COPY
Harry T. Stewart

By: Harry T. Stewart, P.E., Director

This Motion to Accept Settlement Agreement is granted this _____ day of _____, 2007.

COPY
Thomas S. Burck
Thomas S. Burck, Commissioner
Department of Environmental Services

- cc: Michael J. Walls, DES Assistant Commissioner
Public Information Officer, DES PIP Office
- cc: Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Gretchen Hamel, Administrator, Legal Unit
Tracey Boisvert, Compliance Supervisor, DES Wetlands Bureau
NH Association of Conservation Commissions
Town of Surry Board of Selectmen and Conservation Commission
Town of Walpole Board of Selectmen and Conservation Commission
Patricia M. Panciocco, Esquire, P.O. Box 808, Manchester, NH 03105-0808 (registered agent)