

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

MAEVE VALLELY BARTLETT
Secretary

DAVID W. CASH
Commissioner

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

In the Matter of
Arboretum Village, LLC

December 22, 2014

Docket No. 2013-022
DEP File No. UAO-CE-13-6W003

FINAL DECISION

In July 2013, the Petitioner Arboretum Village, LLC brought this appeal challenging a Unilateral Administrative Order (“UAO”) that the Central Regional Office of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on June 21, 2013 for purported violations of the Massachusetts Wetlands Protection Act (“MWSA”), G.L. c. 131, § 40, and the Wetlands Regulations at 310 CMR 10.00, et seq. during the course of the Petitioner’s real estate development activities at real property that the Petitioner owns off of Sarah Drive in Worcester, Massachusetts (“the Site”). UAO, ¶¶ 2-3, 4, 4A, 5, 5A-5F. The UAO asserted that:

[d]uring inspections of the Site on June 14, June 17, and June 18, 2013, MassDEP [personnel] observed . . . [d]ischarge(s) of silt-laden runoff (measured from 200-645 Nephthelometric Turbidity Units — (NTUs)) from unstable, eroded suspended soils at the Site to an unnamed perennial stream, an intermittent

stream, the flood control aqueduct in Auburn, Worcester, and Millbury, and the Blackstone River in violation of the performance standards¹ for Bank at 310 CMR10.54 (4), the performance standards for [BVW] at 310 CMR 10.55(4), and the performance standards for [LUWW] at 310 CMR 10.56 (4).

UAO, ¶ 4A. “The UAO order[ed] the Petitioner [to] cease and desist all earth moving activities and to take corrective action to bring the Site into compliance, including the installation of erosion control measures, the hiring of an erosion control specialist and the hiring of a wetland scientist/specialist to address the violations and bring the Site back into compliance.”

Department’s Pre-Screening Statement, at p. 1; UAO, ¶¶ 5A-5F. The Petitioner denied having committed any violations of the MWPA and the Wetlands Regulations and requested that the UAO be vacated. Petitioner’s Pre-Hearing Statement, at p. 1.

Recently, the Petitioner and the Department (collectively “the parties”) filed a proposed Settlement Agreement for my review and approval pursuant to 310 CMR 1.01(8)(c) to resolve the Petitioner’s claims in the appeal. See [Department’s] Motion for Approval of Settlement Agreement (November 20, 2014). The proposed Settlement Agreement is in the form of an Administrative Consent Order With Penalty and Notice of Non-Compliance (“ACOP”). After reviewing the ACOP, I find that the parties’ settlement of this appeal is reasonable and consistent with wetlands protection under the MWPA and the Wetlands Regulations.

Under the ACOP, the Petitioner is required to, among other things, pay an \$8,000.00 civil administrative penalty to the Commonwealth for its purported violations of the MWPA and the Wetlands Regulations: (1) \$2,000.00 within 30 days after the issuance of this Final Decision and (2) \$6,000.00 in the form of a Supplemental Environmental Project (“SEP”) through the auspices

¹ “Performance Standards” are “th[e] requirements established by [the Wetlands Regulations] for activities in or affecting [specific wetlands areas protected by MWPA].” 310 CMR 10.04.

of the Massachusetts Audubon Society (“MAS”), a major conservation organization. ACOP, ¶¶ 17A-17G; Supplemental Environmental Project Application (“SEP Application”).² MAS maintains 43 wildlife sanctuaries that are open to the public and serve as the base for its conservation, education, and advocacy work across the Commonwealth. SEP Application, at p. 2. One of the sanctuaries is located at Broad Meadow Brook in Worcester, Massachusetts (“Broad Meadow Brook”), the same watershed where the Petitioner’s purported wetlands violations occurred in this case. *Id.*; ACOP, ¶ 17B.

The SEP that the Petitioner is to perform is entitled the “Red Maple Swamp Board Walk” and is intended to enhance the wetlands resources areas in the Broad Meadow Brook watershed. SEP Application, at p. 1; ACOP, ¶ 17B. The SEP involves MAS’s construction of a wooden board walk and observation platform, as well as determining options for possible construction of a foot bridge over Broad Meadow Brook. SEP Application, at pp. 1-3. With the \$6,000.00 in funds that the Petitioner will provide for the SEP, MAS will be able to complete the board walk and observation platform. *Id.* MAS will also install interpretive language, educating visitors

² The ACOP also requires the Petitioner to:

1. immediately take every reasonable step to prevent further violations of the MWPA, the Wetlands Regulations, and the Massachusetts Surface Water Quality Standards;
2. immediately implement the *Erosion Control Plan, Phase IV, Arboretum Worcester, MA*, prepared by EcoTec, Inc., dated June 11, 2014, and any changes to the plan and details require Department approval;
3. pay stipulated penalties and/or be subject to additional high level enforcement action from the Department if any further discharges of turbid stormwater runoff to wetlands resource areas in excess of 150 NTUs occur; and
4. perform any additional work at the Site in compliance with the MWPA and the Wetlands Regulations, including, but not limited to, the prevention of any runoff of siltation into wetland resource areas.

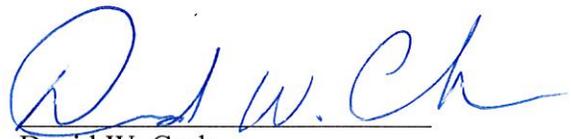
ACOP, ¶¶ 12A-12F.

about the unique water resources located in Broad Meadow Brook and stormwater discharges.

Id.

Under the ACOP, if the cost of performing and completing the SEP winds up costing less than \$6,000.00, the Petitioner is required to pay the Commonwealth, as a civil administrative penalty, the difference between the \$6,000.00 and the actual amount expended for SEP. ACOP, ¶ 17E. Also, if the Petitioner fails to perform and complete the SEP in accordance with the ACOP, the Petitioner is required to pay a stipulated \$6,000.00 civil administrative penalty to the Commonwealth. Id. This would be in addition to the \$100.00 per day stipulated civil administrative penalty that the Petitioner is required to pay if it violates any provision of the ACOP. Id., ¶ 25.

In sum, I issue this Final Decision approving and incorporating the ACOP. Under the terms of 310 CMR 1.01(8)(c) and the ACOP, the Petitioner's claims in this appeal are dismissed as it has waived whatever rights it may have had to further administrative review before the Department as well as appeal to court of the UAO that was at issue in this case.



David W. Cash
Commissioner

SERVICE LIST

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Petitioner: Arboretum Village, LLC;

Legal representative: George P. Kiritsy, Esq.
87 Main Street
Rutland, MA 01543
Fax: 508-886-2810;
e-mail: GeorgeKiritsyLaw@gmail.com;

The Department: Philip Nadeau, Wetlands Section Chief
MassDEP/CERO
627 Main Street
Worcester, MA 01608
e-mail: Philip.Nadeau@state.ma.us;

Joseph Bellino, Environmental Analyst
MassDEP/CERO
627 Main Street
Worcester, MA 01608
e-mail: Joseph.Bellino@state.ma.us;

Legal Representative: MacDara Fallon, Senior Counsel
MassDEP/OGC
One Winter Street, 3rd Floor
Boston, MA 02108;
e-mail: MacDara.Fallon@state.ma.us;

cc: Mary Jude Pigsley, Chief Regional Counsel
MassDEP/CERO
627 Main Street
Worcester, MA 01608
e-mail: MaryJude.Pigsley@state.ma.us;

Leslie DeFillipis, Paralegal
MassDEP/Office of General Counsel
One Winter Street
Boston, MA 02108
e-mail: Leslie.DeFillipis@state.ma.us.