Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

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

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

July 16, 2013

In the Matter of
David Williams

Docket No. 2013-005
File No. W11-3347
Gloucester

FINAL DECISION

I have reviewed the attached Settlement Agreement fully executed on July 10, 2013, by the applicant's representative William Manuel, by the petitioner's representative Richard A. Nylen Esq., and by Sarah Baron, Esq., for the Department. The Department issues this Final Decision incorporating the Settlement Agreement and the Proposed Final Permit, which I have also reviewed.

Under the terms of 310 CMR 1.01(8)(c), these proceedings are dismissed with the parties waiving whatever rights they may have to further administrative review before the Department as well as appeal to court.

Kenneth Kimmell
Commissioner

This information is available in alternate format. Call Michelle Waters-Ekanem, Diversity Director, at 617-292-5751. TDD# 1-866-539-7622 or 1-617-574-6868
MassDEP Website: www.mass.gov/dep

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SERVICE LIST

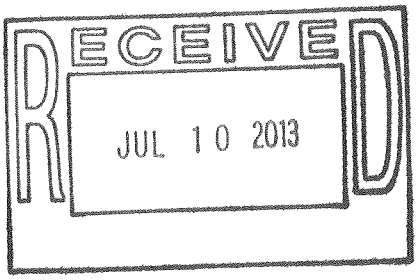
In The Matter Of:	David Williams
Docket No. 2013-005	File No. W11-3347 Gloucester
Representative	Party
David Williams 73 Fernald Street Gloucester, MA 01930	APPLICANT
William Manuell Wetlands & Land Management, Inc. 100 Conifer Hill Drive #516 Danvers, MA 01923 bill@wetlandslm.com	
Richard A. Nylen, Jr., Esq. Lynch, DeSimone & Nylen, LLP 10 Post Office Square, Suite 970N Boston, MA 02109 rnylen@ldnllp.com	PETITIONER Richard Larson, Trustee of Merchant Island Trust II
Sarah Baron Mass DEP – Office of General Counsel One Winter Street Boston, MA 02108 Sarah.baron@state.ma.us	DEPARTMENT
David Slagle MassDEP – Wetlands & Waterways Program One Winter Street Boston, MA 02108 David.slagle@state.ma.us	ANALYST

Date: July 16, 2013

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF APPEALS AND DISPUTE RESLOUTION

OADR Docket No. 2013 -005

In the Matter of
David Williams



SETTLEMENT AGREEMENT

1. The Department of Environmental Protection (the "Department"), the Applicant, David Williams, and the Petitioner, Richard Larson, will hereinafter be referred to as the Parties.

2. The Parties agree that the attached Final Permit/License shall be substituted for and supersede the Draft Permit/License as the final permit/license in this matter. The Department has revised the Draft Chapter 91 License and deleted the word "commercial" from the use statement, and inserted the following additional special condition, "The licensed structure shall not be used for a commercial business." Draft license attached.

3. Pursuant to M.G.L. c.30A and 310 CMR 1.01 (8)(c), the Parties agree to the issuance of a Final Decision incorporating this Settlement Agreement (the "Agreement") and submit this Agreement for approval as required by 310 CMR 1.01(8)(c) in order to finally resolve the above-referenced adjudicatory proceeding as set forth in this Agreement. This Agreement settles and releases all claims of the Parties raised in this proceeding. Upon the issuance of such Final Decision, the Parties hereby agree that any right to additional administrative review before the Department and to appeal to any Court shall be waived.

4. No provision of this Agreement shall be construed as or operate as barring, diminishing, adjudicating or in any way affecting any legal or equitable right of the Department to enforce this Agreement or Final Permit/License, or in any way affecting any other claim, action, suit, cause of action, or demand that the Department may initiate regarding any act or omission not addressed in this Agreement or Final Permit/License.

5. The provisions of this Agreement and any amendments hereto shall be binding upon the parties and their successors in interest.

6. This Agreement may be executed in counterparts, each of which when executed and delivered to the Department's Office of Administrative Appeals shall be an original. All counterparts shall constitute one and the same instrument.

7. The Parties voluntarily enter into this Agreement because each has mutually agreed that settlement of this matter without costly and protracted litigation is in the best interest of the citizens of the Commonwealth and of the Parties and that execution of this Agreement without such litigation, is the most appropriate means of resolving this matter.

8. All signatories to this Agreement certify by the signature(s) below that she/he is duly authorized to execute this Agreement and legally bind their respective parties.

Accordingly, for all of the foregoing reasons, the parties respectfully request that the attached Settlement Agreement and Draft license be approved and that a Final Decision be issued resolving all claims in this matter.

Dated: June 26, 2013

Respectfully submitted:

MassDEP
By its attorney:

Sarah J. Baron, Esq.
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Tel 617 292 5672
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By its attorney:

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David Williams
By:

William Manuel
Wetlands & Land Management
100 Conifer Hill Drive #516
Danvers, MA 01923
bill@wetlandslm.com

Petitioner, Richard Larson
By:

Richard A. Nylen, Jr. Esq.
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David Williams
By:

_____

William Manuel
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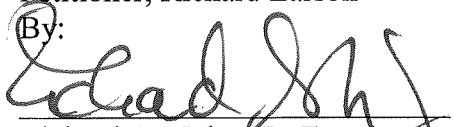
Petitioner, Richard Larson
By:



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COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF APPEALS AND DISPUTE RESLOUTION

Docket No. 2013-005

File No. 338-0420
In the Matter of
David Williams

CERTIFICATE OF SERVICE

I, Sarah J. Baron, do hereby certify, under the pains and penalty of perjury, that on June 5, 2013, I served the attached motion to the authorized representative for each party as noted on the attached service list by electronic mail.

Sarah J. Baron

SERVICE LIST

In Re: **In the Matter of David Williams, Annisquam River, Gloucester, MA**

Docket No. 2013-005

Representative	**Party**
Richard A. Nylen, Jr., Esq. Lynch, DeSimone & Nylen, LLP 10 Post Office Square, Suite 970N Boston, MA 02109	**PETITIONER** Richard Larson, Trustee of Merchant Island Trust II

William Manuel
Wetlands & Land Management, Inc.
100 Conifer Hill Drive
Danvers, MA 01923

APPLICANT

David Williams

David Slagle
MassDEP Office
Office of Wetlands and Waterways
One Winter Street
Boston, MA 02108

DEPARTMENT

Department of Environmental Protection

Date: July 8, 2013

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The Commonwealth of Massachusetts

No. DRAFT

Whereas, David Williams

of -- Gloucester --, in the County of -- Essex -- and Commonwealth aforesaid, has applied to the Department of Environmental Protection for license to -- maintain two existing pile supported wood piers, ramp and seasonal floats and construct and maintain a wood pier -----

and has submitted plans of the same; and whereas due notice of said application has been given, as required by law, to the -- Mayor and City Council -- of the -- City of Gloucester; ---------

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said

-- David Williams --, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- maintain two existing pile supported wood piers, ramp and seasonal floats and construct and maintain a wood pier ------

in and over the waters of -- Annisquam River -- at Pearce Island -- in the -- City -- of -- Gloucester -- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. DRAFT,(1 sheet).

RW

The structures hereby authorized shall be limited to the following uses: to provide recreational docking and boating access to navigable waters.

SPECIAL CONDITIONS

This license will expire thirty (30) years from the date of issuance.

The licensed structure shall not be used for a commercial business.

Floats shall be elevated a minimum of 18 – inches above the flats at low tide.

When removed, all seasonal floats shall be stored landward of the mean high water shoreline and outside of any resource areas. Said storage shall take place in conformance with any applicable local, state or federal requirements.

In accordance with any license condition, easement, or other public right of lateral passage that exists in the area of the subject property lying below the high water mark, the Licensee shall allow the public in the exercise of such rights to pass freely under/around all structures within such area. Should cross braces interfere with uninterrupted lateral passage at the mean high water mark, those braces shall be removed or repositioned.

Accordingly, the Licensee shall place and maintain, in good repair, a public access sign on the easterly/westerly sides of the ramp authorized herein or at each property line, adjacent to the ordinary high water shoreline. Said signs shall be designed in accordance with the signage specifications provided by the Department, attached hereto, and be posted when the licensed structures are installed. Nothing in this condition shall be construed as preventing the Licensee from excluding the public from portions of said structure(s) or property not intended for lateral passage.

All work authorized herein shall be completed within five (5) years of the date of license issuance. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant submits to the Department thirty (30) days prior to the end of the construction period, a written request to extend the period and provides adequate justification for said extension.

Within 60 days of completion of the licensed project, the Licensee shall request in writing that the Department issue a Certificate of Completion in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed in the Commonwealth that the project was completed in accordance with the License.

Please see page 4 for additional conditions to this license.

Duplicate of said plan, number DRAFT on file in the office of said Department, and original of said plan accompanies this License, and is to be referred to as a part hereof.

RW

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform to all terms and conditions stated herein.

2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.

3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.

4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This license may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.

5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.

6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.

9. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.

8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP.

9. This License authorizes structure(s) and/or fill on:

X Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.

__Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.

__a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose.

RW

_ Navigable River or Stream. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this license.

10. Unless otherwise expressly provided by this license, the licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- David Williams -- by paying into the treasury of the Commonwealth -- two dollars and zero cents ($0.00)-- for each cubic yard so displaced, being the amount hereby assessed by said Department. (0.0 cu. yds. = $0.00)

Nothing in this License shall be so construed as to impair the legal rights of any person. This License shall be void unless the same and the accompanying plan are recorded within 60 days from the date hereof, in the Registry of Deeds for the County of -- Essex ----

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this day of in the year two thousand and

Program Chief _____ Department of Environmental Protection

THE COMMONWEALTH OF MASSACHUSETTS

~~This license is approved in consideration of the payment into the treasury of the~~ Commonwealth by the said --

-- the further sum of -- --

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON,

~~Approved by the Governor.~~

_____

~~Governor~~

RAV