

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

June 1, 2015

In the Matter of
Brice Estates, Inc.

Docket No. 2015-001
DEP File No. UAO-CE-14-6W007

FINAL DECISION

In January 2015, the Petitioner Brice Estates, Inc. brought this appeal challenging a Unilateral Administrative Order (“UAO”) that the Central Regional Office (“CERO Office”) of the Massachusetts Department of Environmental Protection (“MassDEP” or “the Department”) issued to the Petitioner on December 26, 2014 for purported violations of the Massachusetts Wetlands Protection Act, G.L. c. 131, § 40 (“MWPA”), and the Wetlands Regulations, 310 CMR 10.00 et seq. (“the Wetlands Regulations”). The Department issued the UAO in connection with the Petitioner’s construction of a residential subdivision roadway, utilities, and drainage facilities (“the Project”) at the Petitioner’s the real property in Rutland, Massachusetts (“the Property”). UAO, ¶¶ 1-4. The Property is identified on the Rutland Assessor’s Map 29A as Parcel A-18. *Id.* The Project is subject to a Superseding Order of Conditions (“SOC”) that the Department issued to the Petitioner on August 24, 2010 pursuant to the MWPA and the Wetlands Regulations authorizing the Project. *Id.* The SOC approved the Project as depicted on the Petitioner’s engineering plans entitled “Revised Site Plans For Brice-Lemon Estates In Rutland,

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Massachusetts,” which had been signed and stamped by William D. Hannigan, a registered Professional Engineer on June 1, 2010 (“the “Approved Plans”). Id.

The UAO asserted that on November 24, 2014, the Massachusetts Department of Conservation and Recreation (“DCR”) cited the Petitioner for purported violations of the Massachusetts Watershed Protection Act in performing work at the Property, and after doing so, informed the Department of the Petitioner’s purported MWPA and Wetlands Regulations violations at the Property. UAO, ¶ 5. UAO also asserted that during a compliance inspection of the Property on December 17, 2014, Department personnel observed that the Petitioner had purportedly committed the following violations of the MWPA and Wetlands Regulations. Id., ¶¶ 6A-6B.

First, the Petitioner had purportedly altered several thousand square feet of the Riverfront Area to Mill Brook in violation of the performance standards for Riverfront Area at 310 CMR 10.58(4) as a result of having clear-cut woody vegetation on Lot # 68 (as shown on the Approved Plans) within the outer riparian zone of the Riverfront Area to Mill Brook. Id., ¶ 6A. This purported alteration also purportedly violated the SOC which did not authorize any activity in the Riverfront Area. Id.

Second, the Petitioner had purportedly failed to comply with Special Condition No. 20 of the SOC, requiring that the Petitioner to construct the Project in accordance with the Approved Plans. Id., ¶ 6B. Specifically, Department personnel purportedly observed that Detention Pond No. 4 on Lot No. 68 was substantially different in configuration from that which had been depicted and approved on the Approved Plans, Sheet 6 of 16. Id.

Lastly, the Petitioner had purportedly failed to comply with General Condition No. 14 of the SOC requiring the Petitioner to notify the Department of any anticipated change in the

Approved Plans prior to performing those changes. Id., ¶ 6C. The Petitioner had purportedly changed the configuration of the Detention Pond No. 4 on Lot No. 68 without first notifying the Department of the change. Id.

The UAO directed the Petitioner to take the following corrective actions:

- (1) immediately cease and desist from all activities in wetland resource areas on the Property until the Petitioner achieved compliance with the MWPA and the Wetlands Regulations;
- (2) immediately take every reasonable step to prevent further violations of the MWPA and the Wetlands Regulations and remain in compliance with the SOC;
- (3) within 14 days of the UAO's issuance, obtain the services of a wetlands scientist/specialist to develop a plan of action to restore the allegedly altered Riverfront Area on Lot No. 68, including assessing and determining the square footage of alleged altered Riverfront Area; and
- (4) within 30 days of the UAO's issuance, submit to the Department, with copies to the Rutland Conservation Commission, a detailed report of the findings of the wetlands assessment as well as a wetlands restoration plan to restore the Riverfront Area.

Id., ¶¶ 7A-7C.

The Petitioner denied the UAO's allegations and requested that the UAO be vacated contending that all work it had performed at the Property had been in accordance with the SOC, the Approved Plans, the MWPA, and the Wetlands Regulations. Petitioner's Appeal Notice, ¶¶ 1-6.

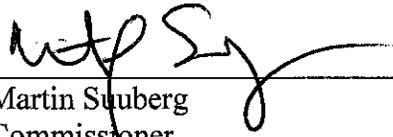
Recently, the Petitioner and the Department (collectively "the parties") filed a proposed Settlement Agreement for my review and approval pursuant to 310 CMR 1.01(8)(c) to resolve the Petitioner's claims in the appeal. See [Department's] Motion for Approval of Settlement Agreement and Issuance of Final Decision (April 30, 2015). 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 conduct wetlands restoration work at the Property and pay a \$5,000.00 civil administrative penalty to the Commonwealth for its purported violations of the MWPA and the Wetlands Regulations within 30 days after the issuance of this Final Decision. ACOP, ¶¶ 12, 15-16, 21. Also, if the Petitioner violates any provision of the ACOP, the Petitioner is required to pay graduated stipulated civil administrative penalties to the Commonwealth of: (1) \$250.00 per day during the first 15 days of any violation (days 1-15), (2) \$500.00 per day during the next 15 days of any violation (days 16-30), and (3) \$1,000.00 per day for any violation on the 31st day and thereafter. ACOP, ¶ 28. This would be in addition to the \$5,000.00 civil administrative penalty that the Petitioner is required to pay under the ACOP. Id.

In sum, I issue this Final Decision approving and incorporating the ACOP. In accordance with the ACOP, the Petitioner is ordered to: (1) perform the wetlands restoration work within the time periods set forth in ¶¶ 16A-16B of the ACOP; (2) pay a \$5,000.00 civil administrative penalty to the Commonwealth for its purported violations of the MWPA and the Wetlands Regulations within 30 days after the issuance of this Final Decision pursuant to ¶ 21 of the ACOP; and (3) pay stipulated civil administrative penalties to the Commonwealth per the graduated schedule in ¶ 28 of the ACOP in the event the Petitioner violates any provision of 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.



Martin Stueberg
Commissioner

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