

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.

23-2084A

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

IRON HORSE EQUESTRIAN, LLC, IRON  
HORSE DRESSAGE, LLC, WENDY  
MCKELVY, and FIELDS & FOOTINGS, LLC,

Defendants.

COMPLAINT

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2023 SEP 15 P 3:57  
JOHN E. POWERS III  
ACTING CLERK MAGISTRATE

**INTRODUCTION**

1. Between approximately January 2021 and June 2022, Defendants Iron Horse Equestrian, LLC, and Iron Horse Dressage, LLC (together, Iron Horse), their manager Wendy McKelvy, and their contractor Fields & Footings, LLC, (together, Defendants) constructed a large outdoor training arena structure for horse dressage—i.e., riding horses to develop obedience, flexibility, and balance—over two streams and approximately half an acre of wetland resources at Iron Horse Equestrian, LLC's property at 32 Nixon Road in Framingham, Massachusetts (Site). The Defendants filled the wetlands and streams with gravel, sand, and other materials; installed culverts to divert the streams below the arena; and constructed an elevated, graded training structure with permanent fencing and a wide border directly on top of the protected wetland resource areas. Though they knew the area contained protected wetlands, the Defendants failed to obtain the required wetlands authorizations from the Framingham Conservation Commission (Commission) or the Department of Environmental Protection (Department) or a water quality certification from the Department. The Defendants also failed to

comply with an enforcement order issued by the Commission ordering restoration of the damaged wetland resources.

2. As a result of the Defendants' actions and omissions, the Commonwealth brings this action against all of the Defendants for violating, and continuing to violate, the Massachusetts Wetlands Protection Act (WPA), G.L. c. 131, § 40, and its implementing regulations at 310 C.M.R. §§ 10.00 *et seq.* (Wetlands Regulations) and the Massachusetts Clean Waters Act (CWA), G.L. c. 21, §§ 26-53, and its implementing regulations at 314 C.M.R. §§ 9.00 *et seq.* (Water Quality Regulations). For the Defendants' violations of law, the Commonwealth seeks substantial civil penalties and permanent injunctive relief requiring restoration of the damaged resources.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action and authority to grant the relief requested pursuant to G.L. c. 131, § 40; G.L. c. 21, §§ 42 and 46; G.L. c. 214, §§ 1 and 3(12); and G.L. c. 12, § 11D.

4. Venue lies in the Suffolk Superior Court pursuant to G.L. c. 223, § 5.

### **PARTIES**

5. The Plaintiff is the Commonwealth appearing by and through the Department and the Attorney General.

6. The Department is an agency of the Commonwealth charged with administering and enforcing the environmental laws of the Commonwealth including, without limitation, the WPA and the Wetlands Regulations and the CWA and the Water Quality Regulations. The Department maintains its principal office at 100 Cambridge Street in Boston, Massachusetts, and has an office at 150 Presidential Way in Woburn, Massachusetts.

7. The Attorney General, who has her office at One Ashburton Place, in Boston, Massachusetts, is the chief legal officer of the Commonwealth. She has authority to bring this action and to seek the relief requested pursuant to G.L. c. 131, § 40; G.L. c. 21, §§ 42 and 46; and G.L. c. 12, §§ 3 and 11D.

8. Iron Horse Equestrian, LLC, is a domestic limited liability company organized under the laws of Massachusetts with its principal office at 10 Cherry Brook Road in Weston, Massachusetts.

9. Iron Horse Equestrian, LLC, has owned and operated the Site for the primary purpose of owning and operating a horse boarding and training facility since August 2018, including in 2022.

10. Iron Horse Dressage, LLC, is a domestic limited liability company organized under the laws of Massachusetts with its principal office at 10 Cherry Brook Road in Weston, Massachusetts.

11. Iron Horse Dressage, LLC, has operated the Site for the primary purpose of operating a horse boarding and training facility since August 2018, including in 2022.

12. Wendy McKelvy is a natural person who resides at 10 Cherry Brook Road in Weston, Massachusetts, and is the sole manager, operator, and person authorized to execute documents filed with the Massachusetts Secretary of State on behalf of, and to execute, acknowledge, deliver, and record any recordable instrument purporting to affect an interest in real property of, both Iron Horse Equestrian, LLC, and Iron Horse Dressage, LLC.

13. Fields & Footings, LLC, is a domestic limited liability company organized under the laws of Massachusetts with its principal office at 20 Kenneth Miner Drive in Wrentham, Massachusetts.

## REGULATORY BACKGROUND

14. Pursuant to Article XCVII of the Amendments to the Massachusetts Constitution, the General Court has enacted legislation to protect the Commonwealth's natural resources by, among other things, preventing the destruction and pollution of wetlands under the WPA and protecting water quality under the CWA.

### **The Massachusetts Wetlands Protection Act and Wetlands Regulations**

15. The WPA, G.L. c. 131, § 40, and Wetlands Regulations, 310 C.M.R. §§ 10.00 *et seq.*, establish a comprehensive regulatory scheme to prevent damage to the Commonwealth's wetlands resource areas and to compel restoration of wetland resources that are illegally altered, filled, removed, or dredged.

16. The WPA and the Wetlands Regulations limit activities in various waterways and defined wetlands resource areas, including vegetated wet areas surrounding waterbodies (called Bordering Vegetated Wetlands), banks and beds of streams and other waterbodies (called Banks and Lands Under Water Bodies and Waterways, respectively), and areas surrounding streams and rivers (called Riverfront Areas). *See* 310 C.M.R. § 10.04. Anyone who plans to conduct activities that may alter those resources must obtain review and authorization from the local Conservation Commission or the Department before beginning work. *See* G.L. c. 131, § 40; 310 C.M.R. §§ 10.02(2)(a), (b), (f), 10.05(4)(a).

17. The Act provides that “[n]o person shall remove, fill, dredge or alter any area subject to protection under this section without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition . . .” G.L. c. 131, § 40. Activities in wetland resource

areas may not impair those resource areas or the important functions they serve. *See* 310 C.M.R. §§ 10.54(4)(a), 10.55(4)(a), 10.56(4)(a)1.-4., 10.58(4)(a).

18. In addition, anyone proposing to work in areas within one hundred (100) feet of Bordering Vegetated Wetlands and Bank (called the Buffer Zone) must notify the local Conservation Commission and the Department of his or her intent to do so. *See* 310 C.M.R. §§ 10.02(2)(b), 10.05(3)(a)2.

19. The WPA further authorizes the Department and local Conservation Commissions to issue enforcement orders directing compliance with the WPA and forbids any person from failing to comply with such an enforcement order. *Id.*

20. The resource areas subject to protection under the WPA serve many important functions that may be impaired when they are altered, including protecting water supply, reducing flood damage, preventing pollution, and protecting fisheries and wildlife habitat. *See* 310 C.M.R. § 10.02(1).

### **The Massachusetts Clean Waters Act and Water Quality Certification Regulations**

21. The CWA, G.L. c. 21, §§ 26-53, authorizes the Department to establish a program for prevention, control, and abatement of water pollution and obligates the Department to adopt water quality standards for the waters of the Commonwealth to protect public health and enhance the quality and value of the Commonwealth's water resources. *See* G.L. c. 21, § 27.

22. Pursuant to that authorization, the Department has adopted water quality standards, *see* 314 C.M.R. §§ 4.00 *et seq.*, and established procedures for the Department to certify that any discharge of dredged or fill material in waters of the United States within the Commonwealth will comply with those standards, in accordance with Section 401 of the Federal Clean Water Act, 33 U.S.C. § 1251. *See* 314 C.M.R. § 9.01(1).

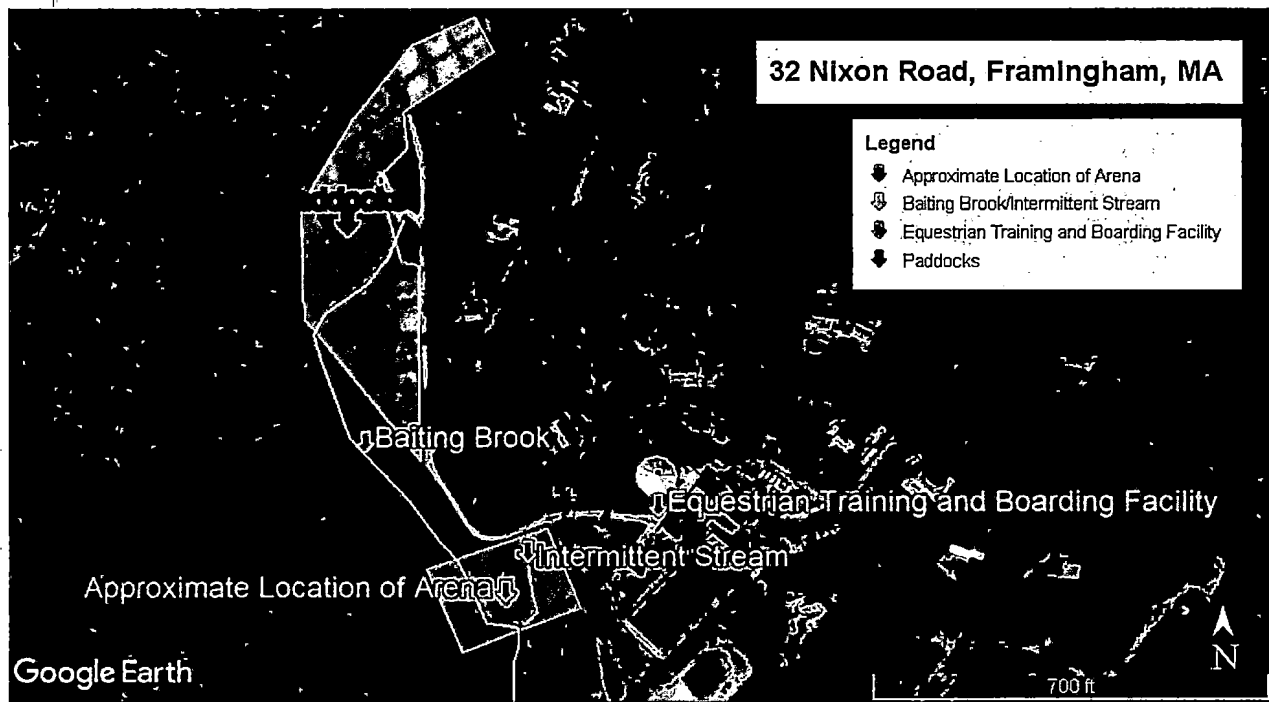
23. Under the Department's Water Quality Regulations, found at 310 C.M.R. §§ 9.00 *et seq.*, anyone conducting an activity that will result in the discharge of dredged or fill material resulting in the loss of more than five thousand (5,000) square feet of certain wetland resource areas, *see id.* § 9.04(1), must obtain a water quality certification from the Department certifying that the planned work will meet applicable water quality standards and minimize environmental impacts (Water Quality Certification), *see id.* §§ 9.06(1), 9.09.

## FACTS

### Property Description and Ownership

24. The Site is an approximately eighty (80) acre parcel of land located on the western side of Nixon Road in a residential area in Framingham, Massachusetts.

25. The eastern portion of the Site contains a large equestrian dressage training and boarding facility, with appurtenant buildings, (equestrian facility) constructed by Iron Horse and Wendy McKelvy between 2018 and 2019, as further described below. *See Figure 1, below.*



**Figure 1: Site Map of 32 Nixon Road, Framingham, MA**

26. The Site contains large, cleared fields including Bordering Vegetated Wetlands to the west and north of the equestrian facility.

27. Baiting Brook and an unnamed intermittent stream run through the Bordering Vegetated Wetlands to the west of the equestrian facility.

28. Baiting Brook is a perennial stream, with continuous flow in part of its stream bed all year during years of normal rainfall.

29. The western portion of the Site contains woodlands and wetlands containing wildlife habitat.

30. Portions of the Site are designated as Critical Natural Landscape and Core Habitat, including Core Habitat Wetlands on the Commonwealth's BioMap2. BioMap2 Critical Natural Landscapes are intact landscapes that are better able to support ecological processes and disturbance regimes and a wide array of species and habitats over long time frames. A BioMap2 Core Habitat designation identifies specific areas necessary to promote the long-term persistence of certain rare species, exemplary natural communities, and intact ecosystems, and BioMap2 Wetlands identify the most important wetlands habitat in Massachusetts.

31. The Site abuts Callahan State Park to its west and connects multiple public and private parcels that provide open space, connected trails open to the public for recreation, and habitat for wildlife—including the Sudbury Valley Trust's Baiting Brook-Welch and Henry's Hill reservations and Framingham's Wittenborg Woods.

32. The Site is also subject to a 2007 conservation restriction granted to Sudbury Valley Trustees that prohibits certain activities on the Site, including construction in certain areas and destruction of vegetation, except as permitted by the grantee.

33. Before 2018, parts of the eastern portion of the Site, including, at most, a small section of land north of the streams over which the defendants later constructed the arena structure, were used as a commercial tree farm.

34. Iron Horse Equestrian, LLC, purchased the Site on August 28, 2018.

35. Upon purchase, Iron Horse ceased operating a tree farm on or near at least the area of the Site on which it constructed the equestrian facility, outdoor arena structure, and equestrian paddocks, as further described below.

36. On December 13, 2018, the City of Framingham issued a partial release removing four (4) acres from the G.L. c. 61A agricultural tax designation on the Site.

37. At all times relevant to this Complaint, Wendy McKelvy held herself out as the sole owner and operator of Iron Horse.

38. Wendy McKelvy designed the dressage facility, created the business plan, secured the financing, supervised construction, and has been running Iron Horse's business at the Site since 2018.

#### Illegal Filling and Alteration of Wetlands at the Site

39. Between 2018 and 2019, the Defendants began construction of the equestrian facility in the eastern portion of the Site, adjacent to Nixon Road, including in the Buffer Zone to protected wetland resource areas.

40. The Defendants did not obtain authorization from the Commission or the Department to alter the Buffer Zone to protected wetland resource areas, however.

41. Accordingly, on February 5, 2019, the Commission ordered Iron Horse to stop construction of the equestrian facility.



42. Iron Horse submitted a Notice of Intent to the Commission on April 23, 2019, belatedly seeking authorization to construct the equestrian facility after construction was well underway.

43. On July 8, 2019, the Commission issued an Order of Conditions that authorized construction of the equestrian facility in the eastern portion of the Site, subject to a delineation of the wetlands and certain conditions to protect wetland resource areas, and identified Bordering Vegetated Wetlands, streams, and associated Buffer Zone to the west of the equestrian facility.

44. Despite that Order of Conditions, on and before June 7, 2022, Iron Horse and Wendy McKelvy hired Fields & Footings, LLC, to construct a large, engineered outdoor training arena structure in wetland resource areas to the west of the constructed equestrian facility.

45. The Defendants then built, during the summer of 2022, an approximately two hundred and twenty (220) foot by ninety (90) foot, or approximately nineteen thousand and eight hundred (19,800) square foot, engineered, outdoor arena structure to the west of the equestrian facility, parallel to the tree line and directly in Bordering Vegetated Wetlands, the Banks of Baiting Brook and the intermittent stream, and associated Riverfront Area and Buffer Zone.

46. The Defendants installed large culverts to divert Baiting Brook and the intermittent stream below the arena structure, along with other drainage facilities.

47. During construction, the Defendants filled the area under and within the arena structure, including Bordering Vegetated Wetlands and other portions of Baiting Brook and the intermittent stream up- and down-stream of the culverts, with an engineered substructure of stone and gravel that they topped with an artificial equestrian footing to provide an elevated, level training surface.

48. Around the arena structure, the Defendants created an approximately twenty (20) foot border of gravel, boulders, and dirt.

49. The Defendants filled and graded pathways and surrounding areas leading into the arena from other areas of the Site.

50. And the Defendants mowed and removed vegetation and trees surrounding the arena, damaging wetland plant species and wildlife habitat along the way.

51. In or before July 2022, Iron Horse and Wendy McKelvy also installed approximately thirty (30) individual horse paddocks with permanent or temporary fencing in the open fields and meadows spanning from north of the arena structure up to the northeastern edge of the Site, including in Buffer Zone to Bordering Vegetated Wetlands.

52. On June 8, 2022, the Commission issued an Enforcement Order to Wendy McKelvy (the June 8 Enforcement Order), in which it found that the arena construction work had occurred without a valid Order of Conditions, in violation of the WPA.<sup>1</sup> The June 8 Enforcement Order directed Iron Horse Equestrian, LLC, as the Site's owner, and its agents, to immediately cease and desist construction of the arena and ordered installation of erosion control measures.

53. Nevertheless, the Defendants continued construction through June 2022, including smoothing excess piles of soil and other material and installing a permanent fence around the arena structure.

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<sup>1</sup> On August 5, 2022, Iron Horse Equestrian, LLC, filed a petition for review of this order in Middlesex Superior Court, pursuant to G.L. c. 249, § 4. *See Iron Horse Equestrian, LLC, v. Framingham Conservation Comm'n, et al.*, Mass. Super. Ct., No. MICV22-8982 (Middlesex Superior Aug. 5, 2022). That matter is currently stayed pending resolution of this complaint.

54. On June 12, 2022, the Commission conducted a Site inspection—at which Wendy McKelvy was present—and issued an oral cease and desist order directing that work on the arena structure cease.

55. On June 15, 2022, the Commission issued a second Enforcement Order to Wendy McKelvy (the June 15 Enforcement Order) finding that the arena was being constructed without a valid Order of Conditions and also that the Defendants had failed to comply with the cease and desist order included in the June 8 Enforcement Order. It further found that the work had altered Bordering Vegetated Wetland, Land Under Water Bodies and Water Ways, Bank, and Riverfront Area at the Site and ordered Iron Horse Equestrian, LLC, as the Site's owner, and its agents, to immediately cease and desist from any activity affecting the wetland resource areas and buffer zone at the Site.

56. By July 12, 2022, Iron Horse had installed, incorrectly, only one small area of siltation control and had failed to install any other erosion controls.

57. On July 12, 2022, the Department inspected the Site and orally ordered Iron Horse and Wendy McKelvy to cease work on the arena structure.

58. Nevertheless, by July 16, 2022, only four days later, the Defendants had installed the footing (the top, final layer of the arena structure), and Iron Horse had begun using the arena structure for dressage training.

59. In constructing the arena structure and surrounding paddocks, the Defendants filled or altered, or caused, suffered, or allowed others to fill or alter, approximately fifteen thousand and two hundred (15,200) square feet of Bordering Vegetated Wetlands, seven hundred and four (704) linear feet of Bank (including three hundred and thirty four (334) linear feet along the perennial stream Baiting Brook and three hundred and seventy (370) linear feet along the

unnamed intermittent stream), approximately three hundred and thirty four (334) square feet of Land Under Water Bodies and Waterways within Baiting Brook, and approximately thirteen thousand and four hundred and ninety (13,490) square feet of Riverfront Area adjoining Baiting Brook, as well as Buffer Zone to Bordering Vegetated Wetlands.

60. The Defendants' construction of the arena structure disturbed and destroyed vegetation in the Bordering Vegetated Wetlands, Bank, Riverfront Area (including within one hundred (100) feet of Baiting Brook), and Buffer Zone to Bordering Vegetated Wetlands.

61. The Defendants' alteration of Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone in constructing the arena structure impaired and destroyed Bordering Vegetated Wetlands and impaired the physical stability of the Bank, the water carrying capacity of the existing channels of Baiting Brook and the intermittent stream, ground water and surface water quality, and the capacity of the Bank and Land Under Water Bodies and Waterways to provide important wildlife habitat functions.

62. The arena structure and paddocks and all associated fill, culverts, and fencing remain in place in the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone on the Site.

63. The Defendants never filed a Notice of Intent with the Commission or obtained an Order of Conditions from the Commission or a Superseding Order of Conditions from the Department before altering the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone on the Site.

64. The Defendants never filed a Request for Determination of Applicability with the Commission before altering the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone on the Site.

65. The Defendants never submitted to the Department an analysis to demonstrate that there are no practicable and substantially equivalent economic alternatives with less adverse effects on the interests protected under the WPA.

66. In addition, the Defendants never obtained a Water Quality Certification certifying that the work would meet applicable water quality standards and minimize environmental impacts and demonstrating that there were no practicable alternatives that would have had less adverse impact on the aquatic ecosystem before altering the Bordering Vegetated Wetlands and Land Under Water Bodies and Waterways on the Site.

### **CAUSES OF ACTION**

#### **COUNT I. VIOLATIONS OF THE MASSACHUSETTS WETLANDS PROTECTION ACT, G.L. c. 131, § 40, AND THE WETLANDS REGULATIONS**

67. The Commonwealth realleges and incorporates by reference the allegations of Paragraphs 1 through 66, as if they were restated in full.

68. The WPA and its implementing regulations provide, with exceptions not relevant here, that no person shall remove, fill, dredge, or alter areas subject to that Act's protection, or cause, suffer, or allow such activity, without first filing a Notice of Intent with the appropriate local Conservation Commission and obtaining an Order of Conditions from the Conservation Commission or a Superseding or Final Order of Conditions from the Department permitting the activity. *See* G.L. c. 131, § 40; 310 C.M.R. §§ 10.01(2)(a), (b), (f), 10.05(4)(a).

69. Areas subject to the protection of the WPA and Wetlands Regulations include Bordering Vegetated Wetlands, Banks, Land Under Water Bodies and Waterways, and Riverfront Area. *See* G.L. c. 131, § 40; 310 C.M.R. § 10.02(1).

70. The Wetlands Regulations also require, with exemptions not relevant here, that

any person proposing to perform work within a Buffer Zone shall submit either a Notice of Intent to do so or Request for a Determination of Applicability with the Conservation Commission.

310 C.M.R. §§ 10.02(2)(b), 10.05(3)(a)2.

71. The regulation at 310 C.M.R. § 10.55(4)(a) provides, with exceptions not relevant here, that any proposed work in a Bordering Vegetated Wetland shall not destroy or otherwise impair any portion of said area.

72. The regulation at 310 C.M.R. § 10.54(4)(a) provides, with exceptions not relevant here, that any work on a Bank shall not impair the physical stability of the Bank, the water carrying capacity of the existing channel within the Bank, ground water and surface water quality, or the capacity of the Bank to provide breeding habitat, escape cover, and food for fisheries.

73. The regulation at 310 C.M.R. § 10.56(4)(a)1.-4. provides, with exceptions not relevant here, that any work in Land Under Water Bodies and Waterways shall not impair the water carrying capacity of the existing channel, ground water and surface water quality, the capacity of the land to provide breeding habitat, escape cover, and food for fisheries, or the capacity of the land to provide important wildlife habitat functions.

74. The regulation at 310 C.M.R. § 10.58(4)(a) provides, with exceptions not relevant here, that any work in Riverfront Area shall comply with the performance standards for Bordering Vegetated Wetlands, including the requirement that such work shall not destroy or otherwise impair any portion of said area.

75. The regulation at 310 C.M.R. § 10.58(4)(c)3. provides that a person seeking to alter Riverfront Area shall demonstrate that there are no practicable and substantially equivalent economic alternatives with less adverse effects on the interests protected under the WPA.

76. The regulation at 310 C.M.R. § 10.58(d) provides that work in Riverfront Area shall have no significant adverse impact on the Riverfront Area to protect the interests identified in the WPA and that, at a minimum, a one hundred (100) foot wide area of vegetation shall be undisturbed.

77. The WPA authorizes the Department and Conservation Commissions to issue enforcement orders directing compliance with that Act and further mandates that “[n]o person shall . . . leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an enforcement order issued pursuant to this section.”

G.L. c. 131, § 40.

78. The regulation at 310 C.M.R. § 10.55(2)(a) defines “Bordering Vegetated Wetlands” as “freshwater wetlands which border on creeks, rivers, streams, ponds and lakes.”

79. The regulation at 310 C.M.R. § 10.54(2)(a) defines “Bank” as “the portion of the land surface which normally abuts and confines a water body” and which “occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, . . . between a water body and an upland.”

80. 147. The regulation at 310 C.M.R. § 10.56(2) defines “Land Under Water Bodies and Waterways” as “the land beneath any creek, river, stream, pond or lake . . . composed of organic muck or peat, fine sediments, rocks or bedrock,” bounded by the water body’s “mean annual low water level.” *See also* 310 C.M.R. §§ 10.02(1)(a)–(b).

81. As relevant here, the regulation at 310 C.M.R. § 10.58(2)(a)3. defines “Riverfront Area” as “the area of land between a river’s mean annual high-water line measured horizontally outward from the river and a parallel line located 200 feet away.” The term “river,” for purposes of defining Riverfront Area, includes perennial streams. *See* 310 C.M.R. 10.58(2)(a)1.

82. The "Buffer Zone" includes areas within one hundred (100) feet of Bordering Vegetated Wetlands and Bank. 310 C.M.R. § 10.04.

83. Pursuant to 310 C.M.R. § 10.04, "fill" means "to deposit any material so as to raise an elevation, either temporarily or permanently."

84. Pursuant to 310 C.M.R. § 10.04, "alter" means "to change the condition of" any area subject to the protection of the WPA, including, without limitation, "the changing of pre-existing drainage characteristics, . . . sedimentation patterns, flow patterns and flood retention areas" and "the destruction of vegetation."

85. The WPA defines "person" to "include any individual, group of individuals, . . . partnership, . . . company, . . . or any other legal entity or its legal representative, agents or assigns." G.L. c. 131, § 40.

86. The Defendants are each "persons" within the meaning of G.L. c. 131, § 40, and 310 C.M.R. §§ 10.00 *et seq.*

87. The freshwater wetlands bordering on Baiting Brook and the intermittent stream at the Site are "Bordering Vegetated Wetlands" as defined by 310 C.M.R. § 10.55(2)(a).

88. The land surface between Baiting Brook and the Bordering Vegetated Wetlands and the land surface between the intermittent stream and the Bordering Vegetated Wetlands at the Site are "Banks" as defined by 310 C.M.R. § 10.54(2)(a).

89. The land beneath Baiting Brook at the Site is "Land Under Water Bodies and Waterways" as defined by 310 C.M.R. § 10.56(2).

90. The area of land within one hundred feet of the Bordering Vegetated Wetlands and Bank at the Site is Buffer Zone as defined by 310 C.M.R. § 10.04.

91. The area of land between Baiting Brook's mean annual high-water line measured



horizontally outward from Baiting Brook and a parallel line located 200 feet away is Riverfront Area as defined by 310 C.M.R. § 10.58(2)(a)3.

92. By constructing an arena over Bordering Vegetated Wetlands, Banks, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone at the Site, thereby changing their drainage characteristics, sedimentation and flow patterns, and surface water characteristics, and destroying vegetation, or by causing or allowing such activity, the Defendants “fill[ed]” and “alter[ed]” the Bordering Vegetated Wetlands, Banks, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone at the Site.

93. By failing to file a Notice of Intent with the Commission and by failing to obtain an Order of Conditions from the Commission or a Superseding Order of Conditions from the Department before filling and altering the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, and Riverfront Area at the Site or causing, suffering, or allowing such activity, the Defendants violated 310 C.M.R. §§ 10.02(2)(a) and 10.05(4)(a), and G.L. c. 131, § 40.

94. By filling and altering the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, and Riverfront Area at the Site without the required authorization, or by causing, suffering or allowing such activity, the Defendants violated and continue to violate 310 C.M.R. § 10.02(2)(a) and G.L. c. 131, § 40.

95. By allowing the unauthorized fill to remain in place in the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, and Riverfront Area at the Site, the Defendants violated and continue to violate 310 C.M.R. § 10.02(2)(a) and G.L. c. 131, § 40.

96. By failing to restore the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, and Riverfront Area at the Site, the Defendants violated and continue to

violate 310 C.M.R. § 10.02(2)(a) and G.L. c. 131, § 40.

97. By failing to file either a Notice of Intent or a Request for a Determination of Applicability before undertaking activities within the Buffer Zone that filled and altered Bordering Vegetated Wetlands and Banks or by causing, suffering, or allowing such activity, the Defendants violated 310 C.M.R. §§ 10.02(2)(b) and 10.05(3)(a)2. and G.L. c. 131, § 40.

98. By filling and altering Bordering Vegetated Wetlands at the Site so that the physical characteristics of the Bordering Vegetated Wetlands were impaired, the Defendants violated 310 C.M.R. § 10.55(4)(a).

99. By filling and altering Banks at the Site so that the physical stability of the Banks, the water carrying capacity of the existing channel within the Banks, the ground water and surface water quality, and the capacity of the Banks to provide breeding habitat, escape cover and food for fisheries were impaired, the Defendants violated of 310 C.M.R. § 10.54(4)(a).

100. By filling and altering Land Under Water Bodies and Waterways at the Site so that the water carrying capacity of the existing channel, the ground water and surface water quality, the capacity of the land to provide breeding habitat, escape cover and food for fisheries, and the capacity of the land to provide important wildlife habitat functions were impaired, the Defendants violated of 310 C.M.R. § 10.56(4)(a)1.-4. and G.L. c. 131, § 40.

101. By filling and altering Riverfront Area at the Site so that the physical characteristics of the Bordering Vegetated Wetlands were impaired, the Defendants violated 310 C.M.R. § 10.58(4)(a) and G.L. c. 131, § 40.

102. By failing to submit to the Department an analysis demonstrating that there are no practicable and substantially equivalent economic alternatives with less adverse effects on the interests protected under the WPA, the Defendants violated 310 C.M.R. § 10.58(4)(c)3. and G.L.

c. 131, § 40.

103. By filling and altering Riverfront Area at the Site, including disturbing vegetation within one hundred (100) feet of Riverfront Area adjoining Baiting Brook, the Defendants significantly adversely impacted the Riverfront Area and violated 310 C.M.R. § 10.58(4)(d) and G.L. c. 131, § 40.

104. By failing to comply with the June 15, 2022, Enforcement Order issued by the Commission by immediately ceasing and desisting from any activities affecting the Bordering Vegetated Wetlands, Bank, Land Under Water Bodies and Waterways, Riverfront Area, and Buffer Zone at the Site, the Defendants violated and Iron Horse and Wendy McKelvy continue to violate G.L. c. 131, § 40.

105. Under G.L. c. 131, § 40, this Court may enjoin violations of the WPA and may enter such orders as it deems necessary to remedy the violations, including orders to restore the altered property to its original condition.

106. Pursuant to G.L. c. 131, § 40, any person who violates the WPA or the Wetlands Regulations shall be subject to a civil penalty of up to twenty-five thousand dollars (\$25,000) for each violation, with each day such violation occurs or continues constituting a separate violation.

**COUNT II. VIOLATIONS OF THE MASSACHUSETTS CLEAN WATERS ACT, G.L. c. 21, §§ 26-53, AND THE WATER QUALITY REGULATIONS**

107. The Commonwealth realleges and incorporates by reference the allegations of Paragraphs 1 through 106, as if they were restated in full.

108. Section 27 of G.L. c. 21 obligates the Department to adopt water quality standards and to adopt regulations to administer the laws relative to water pollution control and the protection of the quality and value of water resources.

109. Pursuant to that authorization, the Department promulgated 314 C.M.R. § 9.04(1), which, with exceptions not relevant here, mandates that any activity that will result in discharge of dredged or fill material into an area protected under the Wetlands Regulations and will cause the loss of more than five thousand (5,000) square feet of Bordering Vegetated Wetlands and Land Under Water Bodies and Waterways may not proceed until a project proponent has applied for, and the Department has issued, a Water Quality Certification for that activity.

110. The regulation at 314 C.M.R. § 9.06(1) further provides, with exceptions not relevant here, that no discharge of dredged or fill material shall be permitted if there is a practicable alternative that would have a less adverse impact on the aquatic ecosystem and minimize potential adverse impacts to Bordering Vegetated Wetlands and Land Under Water Bodies and Waterways, as demonstrated in an alternatives analysis in a Water Quality Certification application.

111. By filling and altering, and thereby causing the loss of, approximately fifteen thousand and two hundred (15,200) square feet of Bordering Vegetated Wetlands and approximately three hundred and thirty four (334) square feet of Land Under Water Bodies and Waterways at the Site, or by causing, suffering, or allowing such activity, without first applying for or obtaining a Water Quality Certification, the Defendants violated 314 C.M.R. § 9.04 and G.L. c. 21, § 27.

112. By discharging fill material without analyzing and submitting to the Department proposed practicable alternatives to lessen the adverse impact on the aquatic ecosystem and the Bordering Vegetated Wetlands and Land Under Water Bodies and Waterways, the Defendants violated 314 C.M.R. § 9.06 and G.L. c. 21, § 27.

113. Under G.L. c. 21, § 46, this Court is authorized to enjoin further violations of G.L.

c. 21.

114. Pursuant to G.L. c. 21, § 42, any person who violates any provision of G.L. c. 21 or any regulation issued thereunder shall be subject to a civil penalty of up to fifty-thousand dollars (\$50,000) per day for such violation.

### **REQUEST FOR RELIEF**

WHEREFORE, the Commonwealth requests that this Court grant the following relief:

- A. Order the Defendants to pay to the Commonwealth a civil penalty of twenty-five thousand dollars (\$25,000) for each day of each violation of the WPA, G.L. c. 131, § 40, and 310 C.M.R. §§ 10.00 *et seq.*;
- B. Order the Defendants to pay to the Commonwealth a civil penalty of fifty thousand dollars (\$50,000) for each day of each violation of the CWA, G.L. c. 21, §§ 26-53, and 314 C.M.R. §§ 9.00 *et seq.*;
- C. Order the Defendants to restore the wetland resources on the Site in compliance with the WPA, G.L. c. 131, § 40, and 310 C.M.R. §§ 10.00 *et seq.*, and the CWA, G.L. c. 21, §§ 26-53, and 314 C.M.R. §§ 9.00 *et seq.*; and
- D. Grant such additional relief as the Court deems appropriate and just.

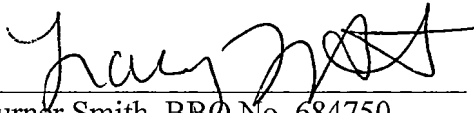
Respectfully submitted,

THE COMMONWEALTH OF MASSACHUSETTS

By its attorneys,

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Dated: September 15, 2023