

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 0327

June 8, 2016

Gregory Vines
16 Grandview Avenue
Pleasantville, NY 10570

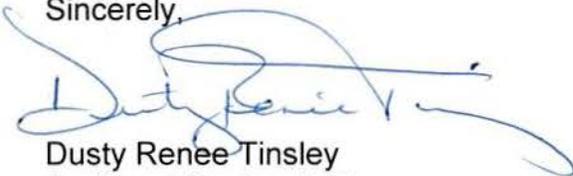
Re: Order on Consent
R4-2016-0202-15

Dear Mr. Vines:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$750 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Swenson
M. Clark
T. Gabriel
J. Cox, ECO

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CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0310

June 8, 2016

Alexandra Vines
16 Grandview Avenue
Pleasantville, NY 10570

Re: Order on Consent
R4-2016-0202-15

Dear Mrs. Vines:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$750 the civil penalty pursuant to Paragraph I.

Sincerely,



Dusty Renee Tinsley
Assistant Regional Attorney
Region 4

Enclosure

ec: T. Swenson
M. Clark
T. Gabriel
J. Cox, ECO



Department of
Environmental
Conservation

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Violations
of 24 of the New York State
Environmental Conservation Law,
and Title 6 Parts 663 and 608
of the Official Compilation of
Codes, Rules and Regulations
of the State of New York,

-by-

Order on Consent
File No. R4-2016-0202-15

Gregory Vines
16 Grandview Avenue
Pleasantville, New York 10570

and

Alexandra Vines
16 Grandview Avenue
Pleasantville, New York 10570

Respondents.

WHEREAS:

JURISDICTION

1. The Department of Environmental Conservation (“Department” or “DEC”) is a department of the State of New York which, pursuant to Article 24 of the Environmental Conservation Law (“ECL”), is authorized to preserve, protect, and conserve freshwater wetlands and the benefits derived therefrom. In particular, DEC regulates and controls the water resources of the state pursuant to ECL Article 24 and the rules and regulations promulgated, in part, under 6 New York Code of Rules and Regulations (“6 NYCRR”) Parts 663 and 608.

RESPONDENTS

2. Respondents Gregory Vines and Alexandra Vines are the owners of property located at 32 Gifford Road, Canaan, New York (“Site”) on which is an unnamed tributary to the Stony Kill (H-204-2-10-10) (“Stream”) and a protected wetland which is a part of Freshwater Wetland CA-22 (“Wetland”). The stream has a water quality classification and

standard of C(T) and the Wetland is a Class 2 state wetland which has a 100 foot adjacent area ("AA").

3. 6 NYCRR Part 663.2 (w) defines a "person" to mean "any corporation, firm, partnership, association, trust, estate, one or more individuals, or any unit of state or local government or any agency or subdivision thereof, including any state department, bureau, commission, board, or other agency; public authority, or public benefit corporation." Respondent is a person as defined at 6 NYCRR Part 663.2 (w). Gregory Vines and Alexandra Vines are "persons" as that term is defined at 6 NYCRR Part 663.2 (w).

FIRST VIOLATION

4. ECL §24-0701(1) states that "After issuance of the official freshwater wetlands map of the state, or of any selected section or region thereof, any person desiring to conduct on freshwater wetlands as so designated thereon any of the regulated activities set forth in subdivision two of this section must obtain a permit as provided in this title." Such activities include, but are not limited to: "any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any other obstructions whether or not changing the ebb and flow of the water; . . . and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland." ECL §24-0701(2).

5. During a December 11, 2015 inspection of the Site, Department staff observed that Respondents had commenced construction of an impoundment in the Wetland through the excavation of a portion of the Wetland and side casted material into the Wetland. In these actions, Respondents dredged, excavated, removed soil, and filled the Wetland.

6. Respondents did not have a permit to dredge, excavate, remove soil, and fill the Wetland.

7. Respondents' unpermitted actions in dredging, excavating, removing soil, and filling the Wetland without a permit are violations of ECL §24-0701(1).

SECOND VIOLATION

8. 6 NYCRR Part 663.4(25) states that a permit is required for grading and dredging that is not included in item 26 and that this type of activity "is incompatible with a wetland and its functions and benefits."

9. During the December 11, 2015 inspection of the Site, Department staff observed that Respondents actions in constructing an impoundment in the Stream bed resulted in

dredging of the Wetland.

10. Respondents' dredging of the Wetland is a violation of 6 NYCRR Part 663.4(25).

THIRD VIOLATION

11. 6 NYCRR Part 663.4(20) states that a permit is required for "[f]illing, including filling for agricultural purposes" and that this type of activity "is incompatible with a wetland and its functions and benefits."

12. During the December 11, 2015 inspection of the Site, Department staff observed that Respondents actions in constructing an impoundment in the Stream bed resulted in filling the Wetland.

13. Respondents' filling of the Wetland is a violation of 6 NYCRR Part 663.4(20).

FOURTH VIOLATION

14. 6 NYCRR Part 608.2(a) states that "Except as provided in subdivision (b) of this section, no person or local public corporation may change, modify or disturb any protected stream, its bed or banks, nor remove from its bed or banks sand, gravel or other material, without a permit issued pursuant to this Part."

15. During the December 11, 2015 inspection of the Site, Department staff observed that Respondents actions in constructing an impoundment in the Stream bed disturbed the bed and banks of the Stream through the excavation of a portion of the Stream's bed and banks and side casted material into the Wetland.

16. Respondents did not have a permit to disturb the Stream bed of the Stream.

17. Respondents' disturbance of the bed and banks of the Stream without a permit is a violation of 6 NYCRR Part 608.2(a).

FIFTH VIOLATION

18. 6 NYCRR Part 663.4(23) states that a permit is required for clear-cutting vegetation other than trees, except as part of an agricultural activity. Regarding this activity in a wetland, this activity "is incompatible with a wetland and its functions and benefits." Regarding this activity in the adjacent area, the activity "is usually incompatible with a wetland and its functions and benefits"

19. During the December 11, 2015 inspection of the Site, Department staff observed the Site and determined that Respondents clear cut vegetation from the Wetland.

20. Respondents' actions in clear cutting vegetation in the Wetland is a violation of 6 NYCRR Part 663.4(23).

CIVIL PENALTY

21. ECL §71-2303(1) provides that a person who violates any provision of Article 24 of the ECL or any rule or regulation, local law or ordinance, permit or order issued pursuant thereto, shall be liable to the people of this state for a civil penalty not to exceed \$11,000 and the restoration of the affected freshwater wetland to its condition prior to the violation.

22. **Waiver.** Respondents affirmatively waived their rights to a hearing as provided by law and has consented to the issuing of this Order on Consent and has agreed to be bound by the provisions, terms and conditions of this Order on Consent.

NOW THEREFORE, having considered this matter and having been duly advised, IT IS ORDERED THAT:

I. **Civil Penalty.** In respect to the Order's violations, a civil penalty in the amount of SEVEN HUNDRED FIFTY DOLLARS (\$750) is assessed against the Respondents for the above violations. SEVEN HUNDRED FIFTY DOLLARS (\$750) shall be paid to the Department by company or bank check made payable to the Department of Environmental Conservation at the time this Order is signed, notarized, and returned to the Department. Payment of the civil penalty shall not in any way alter Respondents' obligation to complete performance under the terms of the Order. Respondents are individually and jointly liable for the full civil penalty amount.

II. **Environmental Benefit Project.** With 10 days of the effective date of this Order, Respondent shall send the Columbia Land Conservancy ("CLC") a check in the amount of \$5,000, made payable to the CLC.

III. **Settlement.** Timely payment of the civil penalty and the EBP called for above and full compliance with the terms and conditions of this Order and Schedule of Compliance is accepted as full settlement of the violations described above.

IV. **Binding Effect.** This Order is binding upon the Respondents, their agents, employees, successors, assigns and to all persons and firms, and corporations acting subordinate thereto.

V. **Summary Abatement.** This Order shall not be construed to prohibit the Commissioner or his duly authorized representatives from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VI. **Indemnification.** Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondents, their directors, officers, employees, servants, agents, successors or

assigns.

VII. **Modification.** The provisions of this Order constitute the complete and entire Order issued to the Respondents concerning resolution of the violations identified herein. No term, condition, understanding, or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound pursuant to the provisions of the Order. No informal oral or written advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, comment, or statement made or submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals as may be required by this Order.

VIII. **Access.** Respondents shall allow duly authorized representatives of the Department access to the facility without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondents' compliance with this Order, Department regulations, and/or the ECL and applicable federal regulations.

IX. **Effective Date.** The effective date of this Order shall be the date upon which it is signed on behalf of the Department.

X. **Scope.** Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against Respondents for any violations not cited in this Order on Consent.

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State or Department may have against anyone other than Respondents, their officers, directors, agents, servants, employees, successors and assigns;

C. The Department's right to enforce this Order against Respondents, their officers, directors, servants, and employees in the event that Respondents shall fail to fulfill any of the terms or provisions hereof;

D. Whatever right the Department has to bring any action or proceeding against Respondents and/or any of Respondents' directors, officers, employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

E. Respondents' right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondents waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands

whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondents.

XI. Review of Submitted Documentation. 1. All documents which Respondents must submit pursuant to this Order are subject to Department approval.

2. The Department shall review each of the submittals Respondents make pursuant to this Order to determine whether it was prepared, and whether the work done to generate the data and other information in the submittal was done in accordance with this Order and generally accepted technical and scientific principles. The Department shall notify Respondents in writing of its approval or disapproval of the submittal. All Department-approved submittals shall be incorporated into and become an enforceable part of this Order; and Respondents shall implement them in accordance with their respective schedules and terms, as approved.

3.a. If the Department disapproves a submittal, it shall so notify Respondents in writing and shall specify the reasons for its disapproval. Within the time frame set forth in that written notification, Respondents shall make a revised submittal to the Department that addresses and resolves all of the Department's stated reasons for disapproving the first submittal.

b. After receipt of the revised submittal, the Department shall notify Respondents in writing of its approval or disapproval. If the revised submission is not approvable as submitted, the Department, at its option, may disapprove it or may approve it on condition that Respondents accept such modifications as may be specified by Department to make it approvable. If Respondents do not accept such modifications, the revised submission will be disapproved. If the Department disapproves the revised submittal, Respondents shall be in violation of this Order. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order.

4. Respondent shall modify and/or amplify and expand a submittal upon the Department's direction to do so if the Department determines, as a result of reviewing data generated by an activity required under this Order or as a result of reviewing any other data or facts, that further work is necessary. The Department agrees that any modifications it specifies will be reasonable and consistent with customary engineering standards.

XII. Communications. Communications shall be sent to

For Department:

Peter Innes
New York State Department of Environmental Conservation - Region 4
1130 N. Westcott Road
Schenectady, New York 12306

For Respondents:

Gregory Vines
16 Grandview Avenue
Pleasantville, New York 10570

and

Alexandra Vines
16 Grandview Avenue
Pleasantville, New York 10570

Please include entity name, address, and permit number (if applicable) on all correspondence.

XIII. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in this Order shall be deemed to refer to each Respondent identified in the Order.

DATED: _____, 2016

DATED: June 8, 2016
Rotterdam, New York

Basil Seggos
Acting Commissioner
New York State Department of Environmental
Conservation

BY:



Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent Gregory Vines hereby consents to the issuance and entry of the foregoing Order, waives his rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

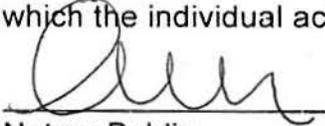
BY: GREGORY J. VINES 

TITLE: _____

DATE: 6/1/2016

STATE OF NEW YORK)
COUNTY OF BRONX) ss.:

On the 01 day of June in the year 2016 before me, the undersigned, a Notary Public in and for the State, personally appeared GREGORY J. VINES, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of the which the individual acted, executed the instrument.



Notary Public
Qualified in the County of: BRONX
My commission expires: 04/17/2017

Aku A. Kodjo
Notary Public, State of New York
No. 01K06121698
Qualified in Bronx County

SCHEDULE OF COMPLIANCE

1. Within 30 days of receipt of the Order, the Respondents shall implement the following activities to restore the Impacted Area as defined in Figure 1 attached:
 - a. The banks of the Stream that were disturbed shall be reconstituted to a width consistent with undisturbed sections of the Stream using soil that was excavated onsite (see figure 2).
 - b. To replace young trees/saplings cut, the Respondents shall plant at least five native wetland trees (wetland indicator FACW or OBL) within the Wetland/Impact Area using the guidance document provided (see figure 3). Planted trees shall be container stock and any tree plantings that do not survive should be replaced the following growing season.
 - c. The Wetland/Impacted Area shall remain undisturbed in perpetuity and be allowed to revegetate naturally.
2. If implementation of remedial actions are impracticable due to seasonal weather conditions, implementation should begin as soon as practicable but shall be completed no later than October 1, 2016.
3. Within 15 days of completion of remedial actions, Respondents shall notify the Department so that an inspection can be scheduled at the Site.
4. Within 10 days of the effective date of this Order, Respondents shall send a check in the amount of \$5,000 to CLC, to: Nathan Davis, Public Lands Project Manager, Columbia Land Conservancy, 49 Main Street, Chatham, New York 12037.