

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the
Violations of Environmental
Conservation Law (“ECL”) Article 24
and Part 663 of Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of New York
(“6 NYCRR”)

ORDER ON CONSENT
File No. R4-2008-1121-165

- by -

Mansions at Delmar Investors, LLC
420 Lexington Ave
Suite 2821
New York, NY 10170

Respondent

WHEREAS:

1. The Department has jurisdiction over the regulation of work in protected wetlands as shown on the Final Freshwater Wetlands Maps filed by county for the State of New York and described in Article 24 of the Environmental Conservation Law and the rules and regulations promulgated pursuant thereto.
2. Respondent, Mansions at Delmar Investors, LLC, owns property in and within 100 feet of a freshwater wetland (CL-19) located near Phillipin Kill Preserve along Fisher Boulevard, in the Town of Bethlehem, NY (“the wetland”).
3. The Mohawk Hudson Land Conservancy owns property adjacent to Respondent’s property (“site”).
4. On November 14, 2008, Department staff inspected the site and observed that the site had been excavated for the placement of drainage pipes, backfilling and rip-rapping.
5. Regulations at ECL § 24-0701 (2) and 6 NYCRR 663.4 (d) (20) require that a permit be issued to fill in a protected wetland or an adjacent area to a protected wetland.
6. Respondent had placed fill adjacent to the wetland on the site, without a permit, and without the knowledge or permission of the Mohawk Hudson Land Conservancy.

7. Respondent's placement of fill adjacent to the wetland without a permit is a violation of regulations at ECL § 24-0701 (2) and 6 NYCRR 663.4 (d) (20).

8. ECL § 71-2303 (1) provides for up to \$3,000 in civil penalties for each violation of a regulation and the restoration of the affected freshwater wetland to its condition prior to the violation.

9. Respondents have affirmatively waived their right to notice and hearing in the manner provided by law, and have consented to the issuing and entering of this Order and agree to be bound by the terms, provisions and conditions contained herein. Respondents admit to the violations set forth herein.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. With respect to the violations identified in this Order, Respondents are hereby assessed a civil penalty of THREE THOUSAND DOLLARS (\$3,000) which shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

Payment of the above penalties shall not in any way alter Respondents' obligation to complete performance under the terms of this Order.

II. The provisions of this Order shall be deemed to bind Respondents, their agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondents shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees 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.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondents shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to inspect and determine the status of Respondents' compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Supervisor of Natural Resources
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. 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 may have against Respondents for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

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

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

D. 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 waive 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. A. Whenever the Department's approval of a submittal under the terms of this Order is required, the Department shall review such submittal 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 applicable state and federal regulations and laws and generally accepted technical and scientific principles. The Department shall notify Respondent in writing of its approval or disapproval of the submittal. All Department-approved plans and reports shall be incorporated into and become an enforceable part of this Order.

B. 1. If the Department disapproves a submittal, its notice shall specify the reasons for disapproval. Respondents shall make a revised submittal to the Department within thirty (30) days after receiving written notice of disapproval that specifically addresses all of the Department's stated reasons for disapproving the first submittal.

2. After receipt of the revised submittal from Respondents, the Department shall notify Respondents in writing of its approval or disapproval. If the Department approves the revised submittal, it shall be incorporated into and become an enforceable part of this Order. If the Department disapproves the revised submittal, it shall notify the Respondents in writing and specify its reasons. The Department reserves its right to take whatever action it deems necessary after the second disapproval of a submittal.

XII. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

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: _____, 2008
Rotterdam, New York

Alexander B. Grannis
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Upon the effective date of this Order, Respondent shall establish and maintain suitable erosion control measures within the adjacent area of the regulated freshwater wetland. By May 1, 2009, Respondent shall seed and mulch all areas of disturbance. Respondent shall keep these measures in good repair until such time as the disturbed areas are fully vegetated.
2. Within 60 days of the effective date of this Order, Respondent shall develop a landscaping plan for the area identified in Diagram 1 (attached). The plan shall include areas on the site which can be enhanced by native plants for screening and wildlife habitat. Respondent shall submit the plan for Department review within 60 days of the effective date of this Order and once approved, the plan shall be implemented by May 30, 2009.