

ORDER TO CEASE AND DESIST

AND

SUBMIT RESTORATION PLAN

To: Property of Ruby A. Miralda de Puerto
129 Hebron Road
Andover, Connecticut

From: James Hallisey, Interim Inland Wetlands and Watercourses Agency Enforcement Officer

Date: April 8th, 2020

Subject: Violation of Inland Wetlands and Watercourses Regulations on property known as 88 Hebron Road, Andover, Connecticut

The following activities have been observed to have occurred on your property located at 88 Hebron Road, Andover, Connecticut: Excavation of a ditch along the front and side property line. Disturbance of materials within 100 feet of an intermittent stream and probable wetland soils along the rear of your property. The activity has resulted in the placement of fill (soil) in a regulated area. In addition, the trench appears to alter the flow of surface runoff and channel it toward the aforementioned stream.

Applicable Laws and Regulations

The Andover Inland Wetlands and Watercourses Regulations define, in relevant part, a “regulated activity” as “any operation within or use of wetland or watercourse involving removal or deposition of material, or any . . . alteration or pollution, of such wetlands or watercourses...” “Material” is defined to include “any substance, solid or liquid, organic or inorganic, including but not limited to soil, sediment, aggregate, land, gravel, clay, bog, mud, debris, sand, refuse or waste.” The term “pollution” is defined to include: harmful thermal effect or the contamination or rendering unclean or impure of any waters of the state by reason of any waste or other materials discharged or deposited therein by any public or private or private sewer or otherwise so as directly or indirectly to come in contact with any waters. This includes, but is not limited to, erosion and sedimentation resulting from any filling, land clearing or excavation activity.

The phrase “rendering unclean or impure” is further defined as: any alteration of the physical, chemical or biological properties of any waters of the state, including, but not limited to, change in odor, color, turbidity or taste.

Furthermore, a “significant activity” is defined as: a (any) regulated activity, including, but not limited to, the following activities that may have a major effect:

1. Any activity involving a deposition or removal of material that will or may have a substantial effect on the wetland or watercourse or on wetlands or watercourses outside the area for which the activity is proposed; or
2. Any activity that substantially changes, or has the potential to substantially change, the natural channel or may inhibit the natural dynamics of a watercourse system; or
3. Any activity that substantially diminishes, or has the potential to substantially diminish, the natural capacity of an inland wetland or watercourse to: support aquatic, plant or animal life and habitats; prevent flooding; supply water; assimilate waste; facilitate drainage; provide recreation or open space; or other functions; or
4. Any activity that is likely to cause or has the potential to cause substantial turbidity, siltation or sedimentation in a wetland or watercourse; or
5. Any activity that causes a substantial diminution of flow of a natural watercourse, or groundwater levels of the regulated area; or
6. Any activity that is likely to cause or has the potential to cause pollution of a wetland or watercourse; or
7. Any activity that damages or destroys, or has the potential to damage or destroy, unique wetland or watercourse areas or such areas having demonstrable scientific or educational value.

A “regulated area” is defined to include a “watercourse,” which in turn, is defined to include “waterways, lakes, ponds . . . and all other bodies of water, natural or artificial, vernal or intermittent, public or private, which are contained within, flow through or border upon the Town [of Middlefield] or any portion thereof.”

Section 4 of the Regulations addresses exemptions, and Section 6.1 provides that any regulated activity requires a permit. Section 6.2 states “any person found to be conducting or maintaining a regulated activity without the prior authorization of the Agency . . . shall be subject to the enforcement proceedings and penalties prescribed in Section 14 of these regulations and any other remedies as provided by law.”

The excavation of a trench and deposition of materials without a permit constitutes both a “regulated activity” and a “significant activity” under the Regulations and fall within no allowable exemption. Therefore, said activities constitute a violation of the Middlefield Inland Wetlands and Watercourses Regulations because of, at a minimum, the following condition:

- a. The “deposition or removal of material that will or may have a substantial effect on the wetland or watercourse.”

Order

You are hereby ordered to cease and desist from any further regulated activities within regulated areas or within one hundred (100') feet of a regulated area, specifically including, but not limited to, the cutting of trees or vegetation and the construction or deposition of any other structure or material.

You are further ordered to submit a restoration plan depicting the type of vegetation for the disturbed area and any reinstallation of materials along the road bank. Your restoration plan shall be prepared by a qualified landscape architect or landscape contractor and shall include a cash bond to guarantee the planting of the trees and their survival for at least one (1) full planting season (i.e., one calendar year following the year of planting). This restoration plan must employ an acceptable method to restore the property to a condition which is suitable to the Agency.

No restoration plan shall be implemented unless and until it has been reviewed and approved by the Agency.

For each day during which the violation continues, including each day until a restoration plan is submitted or, upon submission is approved but not implemented, shall subject you to a civil penalty of not more than one thousand (\$1,000.00) dollars per day for such violation.

Show Cause Hearing

In accordance with Section 15.7 of the Regulations, a Show Cause Hearing will be held on this Order at 7:00 p.m., April 14th, 2020. The hearing will be held virtually via Zoom. Please use the following directions:

Join by computer for video/audio: <https://zoom.us/j/146156690>

Call-in from your phone for audio: +1 646 558 8656

Meeting ID: 146 156 690, Password: 618989

At this hearing you will be given the opportunity to be heard and to show cause why this Order should not remain in effect. Depending upon the decision of the Agency, a copy of this Order, or a modified version of it, may be filed on the Andover Land Records.

In accordance with Section 14.6(a), neither the issuance of this order nor the Show Cause Hearing shall delay or bar an enforcement action under Conn. Gen. Stats. §22a-44(b), nor a criminal action by the State's Attorney under Conn. Gen. Stats. §22a-44(c).

Dated at Andover, Connecticut, this 8 day of April, 2020.

James Hallisey, Interim Enforcement Officer of the Andover Inland Wetlands and Watercourses Agency

C: Meghan Lally, IWWC Chair

Attorney Mark Branse, Halloran and Sage

Eric Anderson, Town Administrator