



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Marcus Realty, LLC
RR 1, Box 120M
Center Harbor, NH 03226

Re: Tax Map 7, Lot 1

ADMINISTRATIVE FINE
BY CONSENT

No. AF 2002-008

I. Introduction

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Water Division, and Marcus Realty LLC, pursuant to RSA 482-A. This Administrative Fine by Consent is effective upon signature by all parties.

II. Parties

1. The Department of Environmental Services, Water Division (DES) is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH.

2. Marcus Realty, LLC is a corporation registered to do business in New Hampshire having a mailing address of ~~RR 1, Box 120M, Center Harbor, NH 03226~~

99-50 FLORENCE ST
CHESTNUT HILL MA. 02467

pw
www

III. Background

1. RSA 482-A authorizes DES to regulate the dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to the waters of the state. RSA 483-A:11, I authorizes DES to adopt rules to implement the wetlands protection program. Pursuant to this authority, DES has adopted NH Admin. Rules Wt 100 *et seq.* to implement this program.

2. Pursuant to RSA 482-A:13 and RSA 482-A:14, III, the Commissioner of DES is authorized to impose administrative fines of up to \$2,000 per violation for violations of RSA 482-A and rules adopted pursuant thereto. The Commissioner has adopted Env-C 614 to establish the schedule of fines for such violations.

3. Marcus Realty, LLC ("Marcus Realty") is the owner of a parcel of land located on Squam Lake in Center Harbor, NH and more particularly described in town of Center Harbor tax maps as Map 7, Lot 1 ("the Property").

4. On November 20, 1998, Division personnel inspected the Property and observed the following:

(a) A dug inlet in a wetland area. The inlet ended in a basin dredged out of the wetland. The total impact of this inlet is approximately 3,000 square feet.

(b) An area of wetlands fill at the northern end of the basin, apparently used as a sitting area. This piece is bell-shaped, and measures approximately 50' at the base, and 50' from the base to the end of the bell. The area of fill is approximately 1,500 sq. ft.

(c) An access road/walking path around a portion of the basin, composed of fill in jurisdictional wetlands. The total impact of this area is approximately 6,000 sq. ft.

(d) A culvert had been placed beneath the access road through the wetland area. The culvert measured approximately 3,000 sq. ft.

5. Marcus Realty has agreed to remediate and restore the Property.
6. To that end, Marcus Realty hired Gove Environmental Services ("Gove") to survey and analyze the Property.
7. On behalf of Marcus Realty, Gove submitted a wetlands removal and restoration plan to DES, dated March 1, 2001. The Division approved the restoration plan on March 15, 2001.
8. Gove began the restoration on May 23, 2001 and completed restoration on May 25, 2001, providing follow-up documentation about the restoration on July 11, 2001 and September 19, 2001.
9. Division personnel conducted a follow-up inspection of the Property on August 15, 2001. The inspection showed that the removal and restoration had been accomplished according to the DES approved restoration plan.

IV. Allegations

1. Marcus Realty has violated RSA 482-A and Wt 303.04(f) by dredging an inlet in a wetland area, affecting an area of approximately 3,000 square feet without a permit from DES.
2. Marcus Realty has violated RSA 482-A and Wt 303.04(f) by placing approximately 1,500 square feet of fill in jurisdictional wetland at the northern end of the basin.
3. Marcus Realty has violated RSA 482-A and Wt 303.03(a) by placing approximately 6,000 square feet of fill in a jurisdictional wetland to create an access road/walking path.
4. Marcus Realty has violated RSA 482-A and Wt 303.04(f) by placing a culvert beneath approximately 3,000 square feet of jurisdictional wetland without a permit from DES.

V. Administrative Fines, Payment, Waiver of Hearing

1. For dredging approximately 3,000 square feet of the public waters of the state without a permit from DES, Env-C 614.05(a)(3) specifies a fine of \$2,000.

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2. For placing approximately 1,500 square feet of fill in the public waters of the state without a permit from DES, Env-C 614.05(a)(3) specifies a fine of \$2,000.
3. For filling approximately 6,000 square feet of jurisdictional wetland designated as prime wetland without a permit from DES, Env-C 614.05(a)(2) specifies a fine of \$2,000.
4. Of the \$6,000 proposed fine, DES will waive \$1,000 contingent on Marcus Realty having no further violations of state wetland laws or rules for a period of two years from the date of execution of this Agreement.
5. For the violations noted above, Marcus Realty agrees to pay the remaining \$5,000 fine immediately upon execution of this Agreement.
6. Payment under paragraph 5 and any payment that becomes due pursuant to Paragraph 4 shall be paid by certified check made payable to: Treasurer, State of New Hampshire and mailed to:

Attention: James Ballentine, Paralegal
DES Legal Unit
PO Box 95
Concord, NH 03302-0095
7. If any payment is made by check or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.
8. By executing this Administrative Fine by Consent, Marcus Realty waives its right to a hearing on or any appeal of the administrative fines identified in Paragraphs V. 1, 2 and 3 and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.
9. The effective date of this Administrative Fine by Consent will be the date on which it is signed by an authorized representative of Marcus Realty, the Director of the Water Division, and the Commissioner of DES.
10. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default will be deemed as a waiver of its rights with regard to that breach or default, nor will such failures be construed as a waiver of the right to enforce each and all provisions of this agreement on any further breach or default.
11. If Marcus Realty fails to comply with the terms of the Agreement, the Division reserves the right to refer this matter to the NH Department of Justice.

Marcus Realty

COPY

By: Peter McGrath, Esq.
Duly Authorized

Date 3/29/2002

COPY
William M. Marcus
WILLIAM M. MARCUS

DATE 3/26/02

New Hampshire Department of Environmental Services

COPY

Harry T. Stewart, P.E., Director
Water Division

Date 4/02/02

COPY

George Dana Bisbee, Assistant Commissioner

Date 4/11/02

- cc: Gretchen Rule, DES Legal Unit
- Public Information Officer, DES PIP Office
- Town of Center Harbor Board of Selectmen
- Town of Center Harbor Conservation Commission
- Austin Furst
- William Marcus
- M. Tilton, DES Wetlands Bureau