

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: Beaver Brook Farm, LLC**

**FILE NO.: FW C09-0023**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM's jurisdiction.

B. Administrative History

The DEM inspector met with the Respondent’s manager, William Barrett, on March 30, 2009 to discuss the violations. The DEM inspector described to Mr. Barrett the specific actions required to resolve the violations and had follow up conversations with Mr. Barrett on May 26, 2009 and May 29, 2009 to determine the status of the work. To date, the Respondent has failed to restore the wetlands as required by the DEM.

C. Facts

- (1) The property is located immediately south/southeast of Main Street (Route 3) opposite house number 645, in the vicinity of Utility Pole Number 884, approximately 2,000 feet northeast of the intersection of Main Street and Lawton Foster Road South, immediately north/northwest of Interstate Route 95, Assessor's Plat 11, Lot 32 in the town of Hopkinton, Rhode Island (the “Property”).
- (2) The Respondent owns the Property.
- (3) DEM inspected the Property on February 26, 2009, March 13, 2009, April 21, 2010, and March 22, 2011. The inspections revealed the following unauthorized alterations of freshwater wetlands:
  - (a) Clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within a Swamp, portions of which are also within Riverbank Wetland. These activities have resulted in the unauthorized alteration of approximately 10.8 acres of freshwater wetland.

- (b) Clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within Perimeter Wetland, portions of which are within Riverbank Wetland. These activities have resulted in the unauthorized alteration of approximately 2.7 acres of freshwater wetland.
- (c) Clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within Riverbank Wetland, portions of which are within Perimeter Wetland. These activities have resulted in the unauthorized alteration of approximately 15,000 square feet of freshwater wetland.
- (4) The Respondent did not receive approval from the DEM to alter the freshwater wetlands on the Property in the areas specified above.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **R.I. Gen. Laws Section 2-1-21** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.
- (2) **DEM’s Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act (effective June 1, 2007), Rule 5.01** – prohibiting activities which may alter freshwater wetlands without a permit from the DEM.

E. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) Cease and desist **IMMEDIATELY** from any further alteration of the above described freshwater wetlands, and
- (2) Restore all freshwater wetlands in accordance with the Restoration Requirements set forth below.

**RESTORATION REQUIREMENTS**

- (a) Prior to the commencement of restoration, install a continuous uninterrupted line of staked haybales or silt fence between those portions of the wetlands that have been altered without authorization and the undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced, if necessary) during and following the

completion of the required wetland restoration, and until such time that all surrounding areas are properly stabilized. At the discretion and direction of the DEM, additional soil erosion and sediment controls must be installed on-site, as deemed necessary, to protect any and all freshwater wetlands.

- (b) Remove all unauthorized fill material (including, but not limited to, soil, boulders, slash, structures, vehicles, a boat, stonewalls, and other property amenities) from any and all freshwater wetlands on the Property. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (c) With the exception of a historically cleared area along Main Street (Route 3) and areas that are naturally revegetating with native trees and shrubs, plant all unauthorized cleared and altered areas within the Riverbank Wetland and Perimeter Wetland as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, ten (10) feet on center, four (4) feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least three (3) of the following selections:

White Oak, *Quercus alba*  
Northern Red Oak, *Quercus rubra*  
Black Birch, *Betula lenta*  
Red Maple, *Acer rubrum*  
White Pine, *Pinus strobus*  
Ironwood (Blue Beech), *Carpinus caroliniana*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion, fifteen (15) feet on center, three (3) feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least three (3) of the following selections:

Witchhazel, *Hamamelis virginiana*  
Mountain Laurel, *Kalmia latifolia*  
Sweet Pepperbush, *Clethra alnifolia*  
Lowbush Blueberry, *Vaccinium angustifolium*

- (d) If any or all of the required plantings fail to survive at least one (1) year from the time planting has been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs for at least one (1) year.
- (e) All disturbed surfaces outside of the Swamp must be seeded with a wildlife conservation grass seed mixture and stabilized with a mat of

loose hay mulch. All disturbed areas within the Swamp must be seeded with a wetland seed mix.

- (f) Upon stabilization of all disturbed areas, erosion and sedimentation controls must be removed from the freshwater wetland. Prior to the removal of the controls, all accumulated sediment must be removed to a suitable upland area, outside of any and all freshwater wetlands.
  - (g) All restored freshwater wetland areas, including replanted areas, must be allowed to revert to a natural wild condition. No future clearing, mowing, cutting, trimming, or other alterations are authorized in any wetland area on the subject property without first obtaining a valid permit from the DEM.
  - (h) The above restoration work must be completed prior to **April 30, 2012**.
- (3) Contact Mr. Bruce Ahern of the DEM at (401) 222-1360 ext. 7703 prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No restoration work shall commence until such time that you have met in the field with the DEM.

F. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**Twenty Five Thousand Dollars (\$25,000.00)**

- (2) The proposed administrative penalty is calculated pursuant to the DEM Rules and Regulations for Assessment of Administrative Penalties, as amended, and must be paid to the DEM within twenty (20) days of your receipt of this Notice of Violation (“NOV”). Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account” and shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

G. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM

Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through(1) above. All requests for hearing MUST:

- (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b),
- (b) Be **RECEIVED** by DEM's Administrative Adjudication Division, at the following address, within twenty (20) days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02903

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
- (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.

- (6) An original signed copy of this NOV is being forwarded to the town of Hopkinton to be recorded in the Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, please contact Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Mr. Bruce Ahern or Mr. Harold Ellis of the Office of Compliance and Inspection at (401) 222-4700 exts. 7703 and 7401, respectively.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section G above.

FOR THE DIRECTOR

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David E. Chopy, Chief  
DEM Office of Compliance and Inspection

Date: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

Beaver Brook Farm LLC  
c/o William J. Barrett, Registered Agent  
1643 Warwick Avenue, #254  
Warwick, RI 02889

by Certified Mail.

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## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW C09 -0023

Respondent: Beaver Brook Farm, LLC

<b>GRAVITY OF VIOLATION</b>					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D(1) and (2) - Alteration of Swamp	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000.00
D(1) and (2) - Alteration of Perimeter Wetland	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000.00
D(1) and (2) - Alteration of Riverbank Wetland	Type I (\$10,000 Max. Penalty)*	Moderate	\$5,000	1 violation	\$5,000.00
<b>SUB-TOTAL</b>					<b>\$25,000.00</b>

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$ 25,000.00**

# PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Swamp*

VIOLATION NO.: D (1) and (2)

<b>TYPE</b>		
<p style="text-align: center;"><b><u>X</u> TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>____ TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><b>____ TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
<b>DEVIATION FROM THE STANDARD</b>		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within a Swamp, portions of which are also within 100-foot Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Swamp was undisturbed mature deciduous wetland forest habitat.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> About 2 ½ years. Unauthorized alterations were first documented by DEM on February 26, 2009.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 10.8 acres.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. The DEM inspector met with William Barrett, who is listed as a manager for the Respondent, on March 30, 2009 to describe the restoration requirements and spoke with Mr. Barrett on May 26, 2009 and May 29, 2009 to determine the status of the restoration. To date, the Respondent has failed to restore the wetlands as required by the DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property. The Respondent was aware of the presence of the wetlands on the property prior to undertaking the work. The DEM inspector spoke with Mr. Barrett on March 10, 2009. Mr. Barrett informed the DEM inspector that he was aware of the presence of the freshwater wetlands and had in fact had the wetlands flagged. The DEM inspectors observed the presence of the wetland flags during an inspection on March 13, 2009.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>  X  </u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

**PENALTY MATRIX WORKSHEET**

CITATION: *Alteration of Perimeter Wetland*

VIOLATION NO.: D (1) and (2)

TYPE		
<p style="text-align: center;"><u>  X  </u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within Perimeter Wetland, portions of which are also within Riverbank Wetland. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> Prior to the unauthorized alterations, the Perimeter Wetland was undisturbed mature deciduous forest habitat.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> About 2 ½ years. Unauthorized alterations were first documented by DEM on February 26, 2009.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 2.7 acres.</p>		
(continued)		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. The DEM inspector met with William Barrett, who is listed as a manager for the Respondent, on March 30, 2009 to describe the restoration requirements and spoke with Mr. Barrett on May 26, 2009 and May 29, 2009 to determine the status of the restoration. To date, the Respondent has failed to restore the wetlands as required by the DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property. The Respondent was aware of the presence of the wetlands on the property prior to undertaking the work. The DEM inspector spoke with Mr. Barrett on March 10, 2009. Mr. Barrett informed the DEM inspector that he was aware of the presence of the freshwater wetlands and had in fact had the wetlands flagged. The DEM inspectors observed the presence of the wetland flags during an inspection on March 13, 2009.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

<u>X</u> MAJOR	MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$5,000 to \$10,000 <b>\$10,000</b>	\$2,500 to \$5,000	\$1,000 to \$2,500
	MODERATE	\$2,500 to \$5,000	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500

# PENALTY MATRIX WORKSHEET

CITATION: *Alteration of Riverbank Wetland*

VIOLATION NO.: D (1) and (2)

<b>TYPE</b>		
<p style="text-align: center;"><u><b>X</b></u> <b>TYPE I</b></p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE II</b></p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">___ <b>TYPE III</b></p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
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THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b><u>FACTORS CONSIDERED:</u></b></p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) <b>The extent to which the act or failure to act was out of compliance:</b> Respondent altered freshwater wetlands by clearing, filling (in the form of soil and other materials), grading, and creating soil disturbance within a Riverbank Wetland, portions of which are also within Perimeter Wetland. The severity of the alteration to the wetland environment was determined to be of importance to the regulatory program.</p> <p>(B) <b>Environmental conditions:</b> With the exception of a historically clear area, the Riverbank Wetland was undisturbed mature deciduous forest habitat.</p> <p>(C) <b>Amount of the pollutant:</b> Not utilized for this calculation.</p> <p>(D) <b>Toxicity or nature of the pollutant:</b> Not utilized for this calculation.</p> <p>(E) <b>Duration of the violation:</b> About 2 ½ years. Unauthorized alterations were first documented by DEM on February 26, 2009.</p> <p>(F) <b>Areal extent of the violation:</b> The aerial extent of the violation is approximately 15,000 ft<sup>2</sup>.</p> <p style="text-align: right;">(continued)</p>		

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- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** Respondent failed to take reasonable and appropriate steps to prevent the noncompliance by obtaining a permit from the DEM. The DEM inspector met with William Barrett, who is listed as a manager for the Respondent, on March 30, 2009 to describe the restoration requirements and spoke with Mr. Barrett on May 26, 2009 and May 29, 2009 to determine the status of the restoration. To date, the Respondent has failed to restore the wetlands as required by the DEM.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Not utilized for this calculation.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** The Respondent had complete control over the occurrence of the violation and had an obligation to protect the wetlands on the property. The Respondent was aware of the presence of the wetlands on the property prior to undertaking the work. The DEM inspector spoke with Mr. Barrett on March 10, 2009. Mr. Barrett informed the DEM inspector that he was aware of the presence of the freshwater wetlands and had in fact had the wetlands flagged. The DEM inspectors observed the presence of the wetland flags during an inspection on March 13, 2009.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
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Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 10,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$5,000 to \$10,000	\$2,500 to \$5,000	\$1,000 to \$2,500
	<b>MODERATE</b>	\$2,500 to \$5,000 <b>\$5,000</b>	\$1,000 to \$2,500	\$500 to \$1,000
	MINOR	\$1,000 to \$2,500	\$500 to \$1,000	\$100 to \$500