

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

**IN RE: 394 Carr's Trail Realty, LLC
Mark DePasquale
June DePasquale**

FILE NO.: OCI- FW-17-20

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 parties ("Respondents") have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 14 December 2016, DEM agents met with Mark DePasquale ("DePasquale") to discuss freshwater wetland violations on Lot 58 that are the subject of a separate enforcement case. DePasquale informed the agents that he intended to purchase Lot 37.1 (which abuts Lot 58) and intended to turn the property into farm land. The agents advised DePasquale that freshwater wetlands are present and specifically pointed to the wetlands on the northeast portion of the lot. The agents stated to DePasquale that he should have the wetlands flagged and verified by the DEM before he did any work. DePasquale stated that he understood. On 27 December 2016, the DEM received a Notification of Intent to Saw or Cut ("Notification to Cut") signed by DePasquale's agent, Brian Palumbo ("Palumbo"), of an intention to cut approximately 25 acres of trees. On 5 January 2017, in response to the Notification to Cut, a DEM agent, William Walker, met with Palumbo at the property and advised Palumbo to stay away from the wetlands on the northeast portion of the lot as he felt that the flags were incorrect. On 26 January 2017, the DEM inspection of the property revealed that the wetlands on the northeast portion of Lot 37.1 were altered along with wetlands on the southwest corner of the lot. The DEM agents advised DePasquale's employee to cease work within the freshwater wetlands. On 27 January 2017, the DEM sent electronic correspondence to DePasquale informing him of the violations observed by the DEM on the previous day and advised him to cease work. On 24 February 2017, the DEM inspection of the property revealed additional alterations to the wetlands within the northeast portion of Lot 37.1. The DEM agents issued a written Cease and Desist ("C&D") to DePasquale's employee, Paul Correia ("Correia"). The C&D ordered a cessation to all activities within freshwater wetlands on the property. Correia signed the C&D and agreed to comply with it. On 11 April 2017, the DEM inspection of the property revealed additional alterations to the wetlands within the northeast portion of Lot 37.1.

C. Facts

- (1) The property is located approximately 2,000 feet north of Flat River Road, and approximately 1,500 feet southeast of Carr's Trail, Assessor's Plat 315, Lot 37.1 ("Lot 37.1") and Lot 58 ("Lot 58") in the town of Coventry (the "Property").
- (2) 394 Carr's Trail Realty, LLC owns Lot 37.1.
- (3) The Secretary of State database lists DePasquale as manager of 394 Carr's Trail Realty, LLC.
- (4) DePasquale and June DePasquale own Lot 58.
- (5) On 19 December 2016, Greene Farm, LLC ("Greene Farm") entered into a farm sublease agreement (the "Farm Lease") with Stamp Farms Enterprises, Inc. for use of Lot 37.1 for the purpose of agricultural farming of vegetables, hay and other crops, and for the raising of livestock.
- (6) The Secretary of State database lists DePasquale as the manager of Greene Farm.
- (7) DePasquale executed the Farm Lease in his capacity as the manager of Greene Farm.
- (8) On 26 January 2017, 24 February 2017 and 11 April 2017, the DEM inspected the Property. The inspections revealed the following:
 - (a) Clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Swamp on the northeast portion of Lot 37.1. This activity resulted in the alteration of approximately 5,500 square feet of freshwater wetland.
 - (b) Clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Perimeter Wetland on Lot 37.1. This activity resulted in the alteration of approximately 63,000 square feet (1.45 acres) of freshwater wetland.
 - (c) Clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within a second Swamp on the southwest portion of Lot 37.1. This activity resulted in the unauthorized alteration of approximately 2,500 square feet of freshwater wetland.
 - (d) Clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Perimeter Wetland associated with the second Swamp on Lot 37.1. This activity resulted in the alteration of approximately 14,500 square feet of freshwater wetland.

- (e) Clearing, stumping, excavating, filling to construct a road (in the form of at least soil material, gravel, debris, and other unclean fill), grading, and creating soil disturbance within Perimeter Wetland on Lot 58. This activity resulted in the alteration of approximately 1,000 square feet of freshwater wetland.
- (9) The alterations to the freshwater wetlands in the areas specified above are not considered normal farming and ranching activities as that term is defined in the Section 2-1-22(i)(1) of the Freshwater Wetlands Act and required an approval from the DEM.
- (10) The DEM did not issue an approval to alter the freshwater wetlands 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 (the “Freshwater Wetland Regulations”), 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) **IMMEDIATELY** cease and desist from any further alteration of the above described freshwater wetlands.
- (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 biodegradable fiber logs along the edge of the unauthorized fill and the adjacent undisturbed freshwater wetlands. These soil erosion and sediment controls must be regularly inspected and properly and continually maintained (and replaced) during and following the completion of the required wetland restoration activities, 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 any and all unauthorized fill material (in the form of at least boulders and soil) from the Swamps. All unauthorized fill material must be removed down to an elevation that matches the adjacent undisturbed Swamp grades, to a point where original native hydric (organic) soils are encountered. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands;
- (c) Remove any and all unauthorized fill material (in the form of at least boulders and soil), from the Perimeter Wetlands. All fill material that is removed must be deposited in an appropriate upland location, outside of any and all wetlands.
- (d) Re-grade any slope resulting from fill removal to a 3:1 slope or shallower. Finished slopes must be stabilized by seeding with a wildlife conservation grass seed mixture and by mulching all disturbed areas with a mat of loose hay.
- (e) Following fill removal the affected Swamp areas must be re-established and restored to the conditions that existed prior to the initiation of the unauthorized alterations. If, following the fill removal required above, an adequate organic (hydric) soil substrate is not present the areas of concern must be further excavated (at the direction of the DEM) and an appropriate amount of high-organic plantable soil (6 inch minimum) must be applied to re-establish the correct Swamp elevations and hydrologic regime in the areas of concern, matching those of the adjacent undisturbed Swamp. While performing the final grading work within the Swamp, small, slightly elevated mounded areas (at the direction of the DEM) may be created (at appropriate spacing), as needed, using high-organic plantable soil, on or within which tree and shrub plantings may be installed.
- (f) Plant trees and shrubs in all unauthorized cleared and altered areas within the Swamps as follows:

Balled and burlapped or transplanted tree species must be planted in an interspersed fashion, 15 feet on center, 4 feet tall after planting, throughout the area defined above. Tree species must include an equal distribution of at least 3 of the following selections:

- Red maple, *Acer rubrum*
- Black gum (Tupelo), *Nyssa sylvatica*
- Green Ash, *Fraxinus pennsylvanica*
- American elm, *Ulmus americana*
- Silver maple, *Acer saccharinum*

Swamp white oak, *Quercus bicolor*
Pin oak, *Quercus palustris*
Red ash, *Fraxinus pennsylvanica*
Yellow Birch, *Betula allegheniensis*

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

Silky dogwood, *Cornus amomum*
Red osier dogwood, *Cornus stolonifera*
Arrowwood, *Viburnum dentatum*
Elderberry, *Sambucus canadensis*
Winterberry, *Ilex verticillata*
Highbush blueberry, *Vaccinium corymbosum*
Spice bush, *Lindera benzoin*
Swamp azalea, *Rhododendron viscosum*
Speckled alder, *Alnus rugosa*

- (g) Plant trees and shrubs in all unauthorized cleared and altered areas within the Perimeter Wetlands as follows:

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

Pin Oak, *Quercus palustris*
Northern Red Oak, *Quercus rubra*
White Pine, *Pinus strobus*
Red maple, *Acer rubrum*
American holly, *Ilex opaca*
Gray Birch, *Betula populifolia*

Balled and burlapped or transplanted shrub species must be planted in an interspersed fashion 7 feet on center, 3 feet tall after planting, throughout the area defined above. Shrub species must include an equal distribution of at least 4 of the following selections:

Silky dogwood, *Cornus amomum*
Highbush Blueberry, *Vaccinium corymbosum*
Red osier dogwood, *Cornus stolonifera*
Arrowwood, *Viburnum dentatum*
Wild raisin, *Viburnum cassinoides*
Elderberry, *Sambucus canadensis*

Inkberry, *Ilex glabra*
Speckled alder, *Alnus rugosa*
Witchhazel, *Hamamelis virginiana*

- (h) If any or all of the required plantings fail to survive at least 1 full year from the time the plantings have been verified by the DEM, the same plant species shall be replanted and maintained until such time that survival occurs over 1 full year.
 - (i) All disturbed surfaces within the restored Swamps must be seeded with a wetland wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch. All disturbed surfaces within the Perimeter Wetlands must be covered with plantable soil/loam (if necessary), seeded with a wildlife conservation grass seed mixture, and stabilized with a mat of loose hay mulch.
 - (j) All restored wetland areas, including replanted areas, shall be allowed to revegetate naturally and revert to a natural wild state. No future clearing, mowing, cutting, trimming, or other alterations are allowed in the restored wetland areas, or within other freshwater wetlands on the Property, without first obtaining a permit from the DEM unless the activity is exempt under Rule 6.00 of the DEM's Freshwater Wetlands Regulations.
 - (k) 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.
 - (l) The above restoration work shall be completed prior to **1 November 2017**.
- (3) Contact Katherine Morgan at (401) 222-4700 ext. 7255 or Katherine.Morgan@dem.ri.gov prior to the commencement of restoration to ensure proper supervision and to obtain required restoration details. No work shall commence until such time that you have met in the field with a representative of 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:
 - (a) **394 Carr's Trail Realty, LLC - \$40,000**
 - (b) **Mark DePasquale and June DePasquale - \$5,000**
- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties* and must be paid to the DEM within 30 days of your receipt of this Notice of Violation (the "NOV"). Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and shall be forwarded to the DEM's Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the 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's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through F 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 the DEM's Administrative Adjudication Division, at the following address, within 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, 4TH 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 Part 1.7(B) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters*.
- (2) A copy of each request for hearing must also be forwarded to:
- Tricia Quest, Esquire
DEM - Office of Legal Services
235 Promenade Street, 4TH 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 the 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 the 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 (vi) and 42-17.6-4(b) and (c).
- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the town of Coventry wherein the Property is located to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and 2-1-24, as amended.
- (7) The 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, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest at the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Katherine Morgan or Bruce Ahern of the DEM's Office of Compliance and Inspection at (401) 222-4700 extensions 7255 and 7703, 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

David E. Chopy, Chief
Office of Compliance and Inspection

Dated: _____

CERTIFICATION

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

394 Carr's Trail Realty, LLC
c/o Orson and Brusini LTD, Registered Agent
144 Wayland Avenue
Providence, RI 02906

Mark DePasquale
5641 Flat River Road
Coventry, RI 02827-1730

June DePasquale
5641 Flat River Road
Coventry, RI 02827-1730

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, WETLANDS

File No.: FW-17-20

Respondents: 394 Carr's Trail Realty, LLC, Mark DePasquale and June DePasquale

GRAVITY OF VIOLATION

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 D(2) Alteration Of Swamp – Fact C(8)(a)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D(1) and D(2) Alteration Of Perimeter Wetland – Fact C(8)(b)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D(1) and D(2) Alteration Of Swamp – Fact C(8)(c)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D(1) and D(2) Alteration Of Perimeter Wetland – Fact C(8)(d)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$10,000
D(1) and D(2) Alteration of a Perimeter Wetland – Fact C(8)(e)	Type I (\$10,000 Max. Penalty)*	Major	\$10,000	1 violation	\$5,000
SUB-TOTAL					\$45,000

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

ECONOMIC BENEFIT FROM NONCOMPLIANCE

COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:

- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.

A review of the record in this matter has revealed that Respondents have either enjoyed no identifiable benefit from the noncompliance alleged in this enforcement action or that the amount of economic benefit that may have resulted cannot be quantified.

COST RECOVERY

ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$45,000

PENALTY MATRIX WORKSHEET

CITATION: Alteration Of Swamp – Fact C(8)(a)

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

TYPE		
<p><u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: 394 Carr's Trail Realty, LLC altered freshwater wetlands by clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Swamp on Lot 37.1. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 7 months. The DEM first documented the violation on 26 January 2017.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: 394 Carr's Trail Realty, LLC failed to take reasonable and appropriate steps to prevent the noncompliance by avoiding altering the freshwater wetlands or obtaining a permit from the DEM to alter the wetlands. The company's manager, DePasquale, was told of the presence of the wetlands on Lot 37.1 by DEM agents during a 14 December 2016 meeting at the property. Erosion and sediment controls were placed along the edge of the wetlands as a step to mitigate the noncompliance.</p>		
(continued)		

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- (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:** The DEM has issued several notices to DePasquale for violations involving the Freshwater Wetlands Act and the DEM's Freshwater Wetlands Regulations. On 10 August 2012, the DEM issued a Notice of Violation (NOV) for alteration of wetlands associated with the construction of a wind turbine on property located in North Kingstown. On 28 May 2013, the DEM and DePasquale executed a Consent Agreement (CA) to resolve the NOV. The CA required payment of \$9,000 (which was paid) and restoration of the altered wetlands by 31 May 2013. Upon information and belief, DePasquale has failed to restore the altered wetlands. On 12 May 2015, the DEM issued a Notice of Intent to Enforce (NIE) to Wind Energy Development (WED) for alteration of wetlands associated with the construction of wind turbines on property located on West Log Bridge Road in Coventry. DePasquale is the Chief Executive Officer of WED. To resolve the NIE, on 2 August 2016, the DEM issued a permit to WED that required restoration of the altered wetlands. Upon information and belief, WED has failed to comply with the permit. On 14 December 2016, the DEM inspected Lot 58, which revealed alteration of freshwater wetlands associated with farming activity that are not the subject of this Notice of Violation. DePasquale restored the wetlands to resolve that case.
- (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:** 394 Carr's Trail Realty, LLC had complete control over the project and had an obligation to protect the wetlands on the property. The company's manager, DePasquale, was advised by DEM agents on 14 December 2016 to have the wetlands on Lot 37.1 flagged and not to conduct any activities within the wetlands without a permit from the DEM. DePasquale stated that he understood. Additional alterations to the freshwater wetlands occurred after the DEM agent sent DePasquale electronic correspondence on 27 January 2017 to cease and desist from furthering altering the wetlands.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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	MAJOR	\$5,000 to \$10,000 \$10,000	\$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 – Fact C(8)(b)

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

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: 394 Carr's Trail Realty, LLC altered freshwater wetlands by clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Perimeter Wetland on Lot 37.1. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The majority of the Perimeter Wetland was undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 7 months. The DEM first documented the violation on 26 January 2017.</p> <p>(F) Areal extent of the violation: Approximately 63,000 square feet (1.45 acres).</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: 394 Carr's Trail Realty, LLC failed to take reasonable and appropriate steps to prevent the noncompliance by avoiding altering the freshwater wetlands or obtaining a permit from the DEM to alter the wetlands. The company's manager, DePasquale, was told of the presence of the wetlands on Lot 37.1 by DEM agents during a 14 December 2016 meeting at the property. Erosion and sediment controls were placed along the edge of the wetlands as a step to mitigate the noncompliance.</p>		
(continued)		

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- (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:** The DEM has issued several notices to DePasquale for violations involving the Freshwater Wetlands Act and the DEM's Freshwater Wetlands Regulations. On 10 August 2012, the DEM issued a Notice of Violation (NOV) for alteration of wetlands associated with the construction of a wind turbine on property located in North Kingstown. On 28 May 2013, the DEM and DePasquale executed a Consent Agreement (CA) to resolve the NOV. The CA required payment of \$9,000 (which was paid) and restoration of the altered wetlands by 31 May 2013. Upon information and belief, DePasquale has failed to restore the altered wetlands. On 12 May 2015, the DEM issued a Notice of Intent to Enforce (NIE) to Wind Energy Development (WED) for alteration of wetlands associated with the construction of wind turbines on property located on West Log Bridge Road in Coventry. DePasquale is the Chief Executive Officer of WED. To resolve the NIE, on 2 August 2016, the DEM issued a permit to WED that required restoration of the altered wetlands. Upon information and belief, WED has failed to comply with the permit. On 14 December 2016, the DEM inspected Lot 58, which revealed alteration of freshwater wetlands associated with farming activity that are not the subject of this Notice of Violation. DePasquale restored the wetlands to resolve that case.
- (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:** 394 Carr's Trail Realty, LLC had complete control over the project and had an obligation to protect the wetlands on the property. The company's manager, DePasquale, was advised by DEM agents on 14 December 2016 to have the wetlands on Lot 37.1 flagged and not to conduct any activities within the wetlands without a permit from the DEM. DePasquale stated that he understood. Additional alterations to the freshwater wetlands occurred after the DEM agent sent DePasquale electronic correspondence on 27 January 2017 to cease and desist from furthering altering the wetlands.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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	MAJOR	\$5,000 to \$10,000 \$10,000	\$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 Swamp – Fact C(8)(c)
 VIOLATION NO.: D (1) and (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: 394 Carr's Trail Realty, LLC altered freshwater wetlands by clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within a second Swamp on Lot 37.1. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Swamp was undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 7 months. The DEM first documented the violation on January 26, 2017.</p> <p>(F) Areal extent of the violation: Approximately 2,500 square feet.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: 394 Carr's Trail Realty, LLC failed to take reasonable and appropriate steps to prevent the noncompliance by avoiding altering the freshwater wetlands or obtaining a permit from the DEM to alter the wetlands. The company's manager, DePasquale, was told of the presence of the wetlands on Lot 37.1 by DEM agents during a 14 December 2016 meeting at the property. Erosion and sediment controls were placed along the edge of the wetlands as a step to mitigate the noncompliance.</p>		
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- (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:** The DEM has issued several notices to DePasquale for violations involving the Freshwater Wetlands Act and the DEM's Freshwater Wetlands Regulations. On 10 August 2012, the DEM issued a Notice of Violation (NOV) for alteration of wetlands associated with the construction of a wind turbine on property located in North Kingstown. On 28 May 2013, the DEM and DePasquale executed a Consent Agreement (CA) to resolve the NOV. The CA required payment of \$9,000 (which was paid) and restoration of the altered wetlands by 31 May 2013. Upon information and belief, DePasquale has failed to restore the altered wetlands. On 12 May 2015, the DEM issued a Notice of Intent to Enforce (NIE) to Wind Energy Development (WED) for alteration of wetlands associated with the construction of wind turbines on property located on West Log Bridge Road in Coventry. DePasquale is the Chief Executive Officer of WED. To resolve the NIE, on 2 August 2016, the DEM issued a permit to WED that required restoration of the altered wetlands. Upon information and belief, WED has failed to comply with the permit. On 14 December 2016, the DEM inspected Lot 58, which revealed alteration of freshwater wetlands associated with farming activity that are not the subject of this Notice of Violation. DePasquale restored the wetlands to resolve that case.
- (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:** 394 Carr's Trail Realty, LLC had complete control over the project and had an obligation to protect the wetlands on the property. The company's manager, DePasquale, was advised by DEM agents on 14 December 2016 to have the wetlands on Lot 37.1 flagged and not to conduct any activities within the wetlands without a permit from the DEM. DePasquale stated that he understood.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u> </u> X 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	MAJOR	\$5,000 to \$10,000 \$10,000	\$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 – Fact C(8)(d)
 VIOLATION NO.: D (1) and (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: 394 Carr's Trail Realty, LLC altered freshwater wetlands by clearing, stumping, excavating, filling (in the form of at least soil material), grading, and creating soil disturbance within Perimeter Wetland associated with the second Swamp on Lot 37.1. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 7 months. The DEM first documented the violation on 26 January 2017.</p> <p>(F) Areal extent of the violation: Approximately 14,500 square feet.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: 394 Carr's Trail Realty, LLC failed to take reasonable and appropriate steps to prevent the noncompliance by avoiding altering the freshwater wetlands or obtaining a permit from the DEM to alter the wetlands. The company's manager, DePasquale, was told of the presence of the wetlands on Lot 37.1 by DEM agents during a 14 December 2016 meeting at the property. Erosion and sediment controls were placed along the edge of the wetlands as a step to mitigate the noncompliance.</p>		
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- (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:** The DEM has issued several notices to DePasquale for violations involving the Freshwater Wetlands Act and the DEM's Freshwater Wetlands Regulations. On 10 August 2012, the DEM issued a Notice of Violation (NOV) for alteration of wetlands associated with the construction of a wind turbine on property located in North Kingstown. On 28 May 2013, the DEM and DePasquale executed a Consent Agreement (CA) to resolve the NOV. The CA required payment of \$9,000 (which was paid) and restoration of the altered wetlands by 31 May 2013. Upon information and belief, DePasquale has failed to restore the altered wetlands. On 12 May 2015, the DEM issued a Notice of Intent to Enforce (NIE) to Wind Energy Development (WED) for alteration of wetlands associated with the construction of wind turbines on property located on West Log Bridge Road in Coventry. DePasquale is the Chief Executive Officer of WED. To resolve the NIE, on 2 August 2016, the DEM issued a permit to WED that required restoration of the altered wetlands. Upon information and belief, WED has failed to comply with the permit. On 14 December 2016, the DEM inspected Lot 58, which revealed alteration of freshwater wetlands associated with farming activity that are not the subject of this Notice of Violation. DePasquale restored the wetlands to resolve that case.
- (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:** 394 Carr's Trail Realty, LLC had complete control over the project and had an obligation to protect the wetlands on the property. The company's manager, DePasquale, was advised by DEM agents on 14 December 2016 to have the wetlands on Lot 37.1 flagged and not to conduct any activities within the wetlands without a permit from the DEM. DePasquale stated that he understood.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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	MAJOR	\$5,000 to \$10,000 \$10,000	\$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 – Fact C(8)(e)
 VIOLATION NO.: D (1) and (2)

TYPE		
<u> X </u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.	<u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.
DEVIATION FROM THE STANDARD		
<small>THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.</small>		
<p><u>FACTORS CONSIDERED:</u></p> <p>Taken from Section 10 (a) (2) of the DEM's <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: DePasquale and June DePasquale altered freshwater wetlands by clearing, stumping, excavating, filling to construct a road (in the form of at least soil material, gravel, debris, and other unclean fill), grading, and creating soil disturbance within Perimeter Wetland on Lot 58. The severity of the alteration to the wetland environment was determined to be of major importance to the regulatory program.</p> <p>(B) Environmental conditions: The Perimeter Wetland was undisturbed forest prior to the alteration.</p> <p>(C) Amount of the pollutant: Considered, but not utilized for this calculation.</p> <p>(D) Toxicity or nature of the pollutant: Considered, but not utilized for this calculation.</p> <p>(E) Duration of the violation: Full duration unknown – at least 8 months. The DEM first documented the violation on 14 December 2016.</p> <p>(F) Areal extent of the violation: Approximately 1,000 square feet.</p> <p>(G) Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance: DePasquale and June DePasquale failed to take reasonable and appropriate steps to prevent the noncompliance by avoiding altering the freshwater wetlands or obtaining a permit from the DEM to alter the wetlands. DePasquale was told of the presence of the wetlands by DEM agents during a 14 December 2016 meeting at the property. The road was relocated out of the freshwater wetland and plantings were installed along the edge of the wetland as a step to mitigate the noncompliance.</p>		
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- (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:** The DEM has issued several notices to DePasquale for violations involving the Freshwater Wetlands Act and the DEM's Freshwater Wetlands Regulations. On 10 August 2012, the DEM issued a Notice of Violation (NOV) for alteration of wetlands associated with the construction of a wind turbine on property located in North Kingstown. On 28 May 2013, the DEM and DePasquale executed a Consent Agreement (CA) to resolve the NOV. The CA required payment of \$9,000 (which was paid) and restoration of the altered wetlands by 31 May 2013. Upon information and belief, DePasquale has failed to restore the altered wetlands. On 12 May 2015, the DEM issued a Notice of Intent to Enforce (NIE) to Wind Energy Development (WED) for alteration of wetlands associated with the construction of wind turbines on property located on West Log Bridge Road in Coventry. DePasquale is the Chief Executive Officer of WED. To resolve the NIE, on 2 August 2016, the DEM issued a permit to WED that required restoration of the altered wetlands. Upon information and belief, WED has failed to comply with the permit. On 14 December 2016, the DEM inspected Lot 58, which revealed alteration of freshwater wetlands associated with farming activity that are not the subject of this Notice of Violation. DePasquale restored the wetlands to resolve that case.
- (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:** DePasquale and June DePasquale had complete control over the project and had an obligation to protect the wetlands on the property.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but 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	MAJOR	\$5,000 to \$10,000 \$5,000	\$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