STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Petitioner,

vs. Case No. 17-6597EF

TRAD E. AND ERICA J. RAVAN,

Respondents.
_____/

FINAL ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this case on April 24, 2018, in St. Augustine, Florida.

APPEARANCES

For Petitioner: Carson Zimmer, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Respondents: Trad Ravan, pro se
Erica Ravan, pro se
3100 Victoria Drive
St. Augustine, Florida 32086-5483

STATEMENT OF THE ISSUE

The issue is whether Respondents should have an administrative penalty assessed, take corrective action on their property to remove fill, and pay investigative expenses for the reasons stated in the Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment (Notice) issued by

the Department of Environmental Protection (Department) on July 5, 2017.

PRELIMINARY STATEMENT

In a two-count Notice, the Department alleges that in 2016, Respondents filled 0.11 acres of jurisdictional wetlands on their property in St. Augustine, Florida, without a permit. The Notice proposes to assess a $1,000.00 administrative penalty, require certain corrective action, and recover $500.00 in investigative expenses incurred by Department staff. Respondents timely requested a hearing to contest the proposed agency action, and the matter was referred by the Department to the Division of Administrative Hearings to conduct a hearing. The case was initially assigned to Administrative Law Judge Canter, but was later transferred to the undersigned.

At the hearing, the Department presented the testimony of one witness. Department Exhibits 1 through 21 were accepted in evidence. Respondents were represented by Mr. Ravan, who testified on their behalf. Respondents' Exhibits 1 through 14 were accepted in evidence.

A one-volume Transcript of the hearing was prepared. A proposed final order was filed by the Department on May 24, 2018, and has been considered in the preparation of this Final Order.

FINDINGS OF FACT

1. Respondents' residence is located at 3100 Victoria Drive, St. Augustine. The property, purchased in 2009, faces Victoria Drive to the west. The high point of the lot is where it abuts the street. It then slopes downward to a small creek which lies at the rear of the parcel. The largest elevation drop is at the front of the property.

2. The Department has the authority to institute a civil or administrative action to abate conditions that may create harm to the environment. In this case, it filed a Notice directed against Respondents for allegedly placing fill on 0.11 acres of jurisdictional wetlands (around 5,000 square feet) located on their property. Mr. Ravan admits that he placed fill on his property without a permit, but he disputes the Department's assertion that the filled area covers 0.11 acres of wetlands.

3. Wetlands are areas that are inundated and saturated with water for a long enough period of time to support vegetation that can adapt to that environment. Fla. Admin. Code R. 62-340.200(1). If the landward extent of a wetland cannot be determined by direct application of the rule definition, i.e., without significant on-site work, field verification using the wetland delineation methodology in Florida Administrative Code Rule 62-340.300 is required. Field verification involves a visual inspection of the site to evaluate vegetation, soil

conditions, and other hydrologic indicators on the property. If two of these characteristics are found, the Department identifies the area as a wetland. In this case, field verification was necessary.

4. In 2016, Mr. Ravan was involved in a dispute with a neighbor whose dog was repeatedly "messing" in his backyard. After words were spoken by the two, Mr. Ravan believes the neighbor informed the County that Mr. Ravan was placing fill in his back yard. This assumption probably is true, as emails from the County to the Department state that the case arose a few days later as a result of a "citizen complaint." Pet'r Ex. 18.

5. After receiving the citizen complaint, a County employee visited Respondents' property. The employee informed Mr. Ravan that fill material (dirt) had been placed on jurisdictional wetlands without a permit. A few days later, the County reported the alleged violation to the Department.

6. In response to the County's referral, in September 2016, Ms. Sellers, a Department Environmental Specialist III, inspected the property with a County representative. In preparation for her visit, she reviewed aerials of the property to determine the elevation of the area, reviewed soil mapping layers, and drove around the site to verify the drainage patterns on the property and whether it had any connections to a water body.

7. During her inspection, Ms. Sellers performed "a good analysis of the property" and took photographs of the filled area. The results of her inspection are found in a Chapter 62-340 Data Form accepted in evidence as Exhibit 17. It supports a finding that the filled area consists of wetlands and covers around 0.11 acres. Respondents submitted no contrary evidence.

8. After her inspection, Ms. Sellers informed Mr. Ravan that he must remove the fill. The Notice was issued on July 5, 2017.

9. On a follow-up visit a year after her initial inspection, Ms. Sellers observed that some of the fill piles had been removed, the remaining fill had been spread throughout the area, and some of the vegetation observed in September 2016 was now covered. In a visit a few weeks before the final hearing in April 2018, Ms. Sellers observed that some fill still remained.

10. To comply with the law, Mr. Ravan must remove the fill, obtain a permit, or enter into a consent order. If a permit is obtained, besides the cost of the permit ($420.00), Mr. Ravan would have to offset the environmental impacts by purchasing a mitigation bank credit, an expensive undertaking. If the fill is removed, it must be extracted with a small device, such as a wheelbarrow or other small piece of equipment, as a vehicle cannot be driven into the backyard. This will be a tedious and

time-consuming process. The Department's preferred option is to remove the fill.

11. Because of the slope of the lot, mainly at the front of the parcel, Mr. Ravan has experienced drainage problems since he purchased the home in 2009. The drainage problem is caused by a County-owned culvert that runs along Victoria Drive, stops at the corner of his lot, and then dumps the runoff into his yard. Despite Mr. Ravan's repeated efforts to obtain relief, the County has refused to correct the problem. During heavy rain events, the blocked culvert overflows into his yard and runs down the side of his property to the rear of the lot. Photographs support Mr. Ravan's claim that the drainage problem has caused severe erosion on his property.

12. Mr. Ravan testified that some of the fill was in place when he purchased the property from the prior owner in 2009. Because of its age, he contends the fill should be "grandfathered." However, Ms. Sellers established that "historic fill" must be at least 20 years old in order to be immune from enforcement action. In this case, there is no proof that the fill qualifies for this exception.

13. Mr. Ravan has cooperated fully with the Department throughout this proceeding. The evidence shows that Mr. Ravan acted in good faith and is only attempting to prevent runoff from

the culvert, which has resulted in deep channels in the side and rear of his yard and washed away much of the top soil.

14. There is no evidence regarding the derivation of the Department's "investigative expenses" of at least $500.00.

15. At hearing, Ms. Sellers summarized the proposed corrective action. This is a reasonable corrective action.[1/] Mr. Ravan disputes her assertion that in some areas of the backyard, up to two feet of fill must be removed. He contends that if two feet of soil is removed, the water table would be reached. However, this issue must be resolved during the corrective action process.

CONCLUSIONS OF LAW

16. Section 403.121(2)(b), Florida Statutes, provides that the Department may institute an administrative proceeding to order the abatement of conditions creating a violation of the law. The Department has the burden of proving by a preponderance of the evidence that Respondents are responsible for the violation. § 403.121(2)(d), Fla. Stat. Because the Department is requesting the imposition of administrative penalties, "[f]ollowing the close of the hearing, the administrative law judge shall issue a final order on all matters, including the imposition of administrative penalty." Id.

17. Rule 62-330.020(2)(a) requires that a permit must be obtained from the Department prior to filling in, on, or over

wetlands and other surface waters. The facts here establish that a violation of the rule has occurred. This in turn constitutes a violation of section 403.161, which makes it unlawful to contravene a Department rule.

18. Pursuant to section 403.121(3), for a fill violation, the Department shall assess a penalty of $1,000.00 for unpermitted filling. However, section 403.121(10) provides that the administrative law judge may receive evidence in mitigation and that the penalty "may be reduced up to 50 percent" for mitigating circumstances. In this case, the circumstances warrant a 50-percent reduction in the administrative penalty.

19. There is no evidence to establish the accuracy or reasonableness of the investigative expenses. Therefore, the request for reimbursement of these expenses is denied.

20. The corrective actions ordered in the Notice are reasonable and should be imposed, except for the deadlines for compliance, which are unreasonably short.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

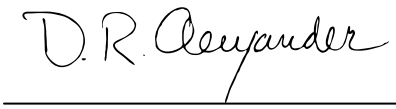
ORDERED that Respondents shall comply with the Orders for Corrective Action set forth in the Notice except that all deadlines are doubled in length, so that, for example, the deadline to remove all fill and restore the wetland impact area

shall be 60 days, rather than 30, and the administrative fine shall be paid in 60 days.

A penalty in the amount of $500.00 is imposed. Recovery of investigative expenses is denied.

All deadlines shall be calculated from the date of this Final Order.

DONE AND ORDERED this 8th day of June, 2018, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of June, 2018.

ENDNOTE

[1/] While the corrective action cures the illegal fill problem, it does very little to prevent runoff from the County culvert, which continues to wash away the side and rear of Mr. Ravan's yard. At hearing, Ms. Sellers suggested that Mr. Ravan install French drains or some other type of drainage system to alleviate the problem. The best solution may be some type of corrective action by the County.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.